

28 Am. Jur. 2d Estoppel and Waiver One IV A Refs.

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Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  8, 9, 25, 26, 33, 97, 98(1)

A.L.R. Library

A.L.R. Index, Collateral Estoppel

A.L.R. Index, Equitable Estoppel

A.L.R. Index, Estoppel and Waiver

A.L.R. Index, Promissory Estoppel

West's A.L.R. Digest, [Estoppel](#)  8, 9, 25, 26, 33, 97, 98(1)

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28 Am. Jur. 2d Estoppel and Waiver § 118

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

A. In General

§ 118. Estoppel limited to parties and privies; general rule

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  8, 9, 25, 26, 97, 98(1)

Generally speaking, an estoppel operates on, or is effective as to, the parties to the transaction out of which it arises and their privies.¹ Likewise, equitable estoppel applies only to parties to a transaction and those in privity with them.²

Persons to whom a representation is made or who are intended to be influenced, and their privies, may take advantage of an estoppel.³ Thus, promissory estoppel may be asserted by third parties.⁴ Indeed, some courts have held that a promisor should reasonably foresee that his or her promise to one person will induce action or forbearance by a third person, and the doctrine of promissory estoppel thus protects the third person even though the promise was not made directly to the third person⁵ though there is contrary authority.⁶ Likewise, an estoppel in pais does not operate in favor of everyone but only in favor of a person who has been misled to his or her injury.⁷

The doctrine of estoppel by record or judicial estoppel generally only applies in suits between the same parties to the judicial action and their privies⁸ though there is contrary authority.⁹

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Footnotes

- ¹ [Walker v. Sutton](#), 222 Ga. App. 638, 476 S.E.2d 34 (1996); [Armstrong v. Armstrong](#), 192 Neb. 11, 218 N.W.2d 541 (1974); [Warner Independent School Dist. No. 230 of Brown County v. County Bd. of Ed. of Brown County](#), 85 S.D. 161, 179 N.W.2d 6 (1970).

- 2 Wabash Grain, Inc. v. Smith, 700 N.E.2d 234 (Ind. Ct. App. 1998); Facer v. Toledo, 94 Ohio Misc. 2d 1, 702 N.E.2d 1267 (C.P. 1998).
Ohio law does not allow the defense of equitable estoppel to bind parties not in privity to contract. *In re Homeplace Stores, Inc.*, 228 B.R. 88, 38 U.C.C. Rep. Serv. 2d 33 (Bankr. D. Del. 1998).
- 3 Caulfield v. Bethlehem Steel Corp., 195 F. Supp. 360, 4 Fed. R. Serv. 2d 579 (E.D. Pa. 1961); Antone v. New Amsterdam Cas. Co., 335 Pa. 134, 6 A.2d 566 (1939).
- 4 Masonry v. Miller Const., 558 So. 2d 433 (Fla. Dist. Ct. App. 1st Dist. 1990).
- 5 Ravelo by Ravelo v. Hawaii County, 66 Haw. 194, 658 P.2d 883 (1983); Dallum v. Farmers Union Cent. Exchange, Inc., 462 N.W.2d 608 (Minn. Ct. App. 1990); Silberman v. Roethe, 64 Wis. 2d 131, 218 N.W.2d 723 (1974).
Traditional principles of state law allow a contract to be enforced by or against nonparties to the contract through estoppel. *Arthur Andersen LLP v. Carlisle*, 129 S. Ct. 1896, 173 L. Ed. 2d 832 (2009).
- 6 Public Service Co. of New Hampshire v. Hudson Light and Power Dept., 938 F.2d 338 (1st Cir. 1991) (applying Massachusetts law).
- 7 Fotomat Corp. of Florida v. R. B. Films, Inc., 366 So. 2d 1213 (Fla. Dist. Ct. App. 1st Dist. 1979).
- 8 Colonial Refrigerated Transp., Inc. v. Mitchell, 403 F.2d 541 (5th Cir. 1968); Reno v. Beckett, 555 F.2d 757 (10th Cir. 1977) (applying Kansas law); Lindas v. Cady, 183 Wis. 2d 547, 515 N.W.2d 458 (1994).
There is sufficient "identity of parties" for estoppel by record when the party in second proceeding is a privy of the party to the prior proceeding. *Great Lakes Trucking Co., Inc. v. Black*, 165 Wis. 2d 162, 477 N.W.2d 65 (Ct. App. 1991).
- 9 Aetna Life Ins. Co. v. Wells, 557 S.W.2d 144 (Tex. Civ. App. San Antonio 1977), writ granted, (Mar. 8, 1978) and writ refused n.r.e., 566 S.W.2d 900 (Tex. 1978) and writ withdrawn, (May 17, 1978).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 119

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

A. In General

§ 119. Privity defined

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  98(1)

"Privies" are persons connected together, or having a mutual interest in the same action or thing, by some relation other than that of an actual contract between them.¹ One person becomes "privy" of another, for the purposes of the law of estoppel, by succeeding to the position of the other as regards the subject of the estoppel or by holding in subordination to the other.² "Privity" means a mutual or successive relationship to the same rights of property³ and is generally defined as a relationship in which a person is so identified in interest with another that he or she is said to represent the same legal right⁴ based upon a case-by-case examination.⁵

The rule applying estoppel to privies includes privies in blood, privies in estate, and privies in law.⁶

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- ¹ [Dillingham v. Gardner](#), 222 N.C. 79, 21 S.E.2d 898 (1942).
- ² [Womach v. City of St. Joseph](#), 201 Mo. 467, 100 S.W. 443 (1907).
A successor corporation stands in privity with a defunct corporation under which it claims an interest in title. [Grand Lodge Independent Order of Odd Fellows of Nebraska v. Marvin](#), 220 Neb. 197, 369 N.W.2d 54 (1985).
- ³ [Metalworking Machinery Co., Inc. v. Fabco, Inc.](#), 17 Ohio App. 3d 91, 477 N.E.2d 634, 41 U.C.C. Rep. Serv. 1279 (3d Dist. Hancock County 1984).

- 4 Citizens Suburban Co. v. Rosemont Development Co., 244 Cal. App. 2d 666, 53 Cal. Rptr. 551 (3d Dist. 1966).
- 5 People ex rel. Dept. Pub. Wks. v. Volz, 25 Cal. App. 3d 480, 102 Cal. Rptr. 107 (3d Dist. 1972).
- 6 Hardie v. Estate of Davis, 312 Ark. 189, 848 S.W.2d 417 (1993); Howard v. Perkins, 229 Ga. 279, 191 S.E.2d 46 (1972).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 120

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

A. In General

§ 120. Mutuality of estoppel; strangers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  97, 98(1)

Generally, an equitable estoppel must be mutual and reciprocal to be effective.¹ Unless both parties to a transaction are bound by an estoppel, neither is bound.² Similarly, a person may not, by his or her own act, create an estoppel in his or her favor;³ as for the doctrine of estoppel to have relevance, the party who seeks to invoke it must be an entity independent of the one to be estopped.⁴

Mutuality being requisite, an estoppel operates neither in favor of, nor against, strangers—that is, persons who are neither parties nor privies to the transaction out of which the estoppel arose⁵—though it has been held that promissory estoppel may be asserted by a third party.⁶

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- ¹ [White v. Croker](#), 13 F.2d 321 (C.C.A. 5th Cir. 1926); [Wilms v. Weissman](#), 38 Cal. App. 2d 693, 102 P.2d 382 (1st Dist. 1940); [Charpentier v. Welch](#), 74 Idaho 242, 259 P.2d 814 (1953).

The one general rule applicable alike to estoppel by record, by deed, and to equitable estoppel or estoppel in pais is that estoppels must be mutual; an estoppel's binding effect is between the immediate parties, their privies in blood, in law, and by estate. [Howard v. Perkins](#), 229 Ga. 279, 191 S.E.2d 46 (1972).
- ² [City of Houston v. Southwestern Bell Telephone Co.](#), 259 U.S. 318, 42 S. Ct. 486, 66 L. Ed. 961 (1922); [Wilms v. Weissman](#), 38 Cal. App. 2d 693, 102 P.2d 382 (1st Dist. 1940); [Brunsedale v. Bagge](#), 224 N.W.2d 384 (N.D. 1974).
- ³ [Harris v. Steele](#), 43 N.C. App. 44, 258 S.E.2d 363 (1979).
- ⁴ [In re Antioch University](#), 418 A.2d 105 (D.C. 1980).

- 5 Corkill Elec. Co. v. City of Chicago, 196 Ill. App. 3d 838, 143 Ill. Dec. 955, 554 N.E.2d 1027 (1st Dist. 1990); McClellan v. Scardello Ford, Inc., 619 S.W.2d 593 (Tex. Civ. App. Amarillo 1981) (estoppel by contract); DD & L, Inc. v. Burgess, 51 Wash. App. 329, 753 P.2d 561 (1988) (estoppel by deed).
As to estoppel by deed and strangers, see § 6.
- 6 § 118.

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 121

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

A. In General

§ 121. Counterestoppel, or estoppel against estoppel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  33

One party to a transaction may be denied the right to assert an estoppel against the other party by reason of certain facts that create an estoppel against the party seeking to assert the estoppel.¹ The doctrine applied in this situation is characterized as one of counterestoppel, or estoppel against estoppel.² Under the doctrine of counterestoppel, two estoppels may destroy or neutralize each other, or as otherwise expressed, one estoppel may set another at large.³ The doctrine also prevents one party from relying on an estoppel when that party alone is responsible for facts that constitute the estoppel.⁴ Thus, estoppels by deed may neutralize each other, and an estoppel in pais may operate to prevent the creation of an estoppel by deed and vice versa.⁵

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- ¹ [Jennings v. Russell](#), 209 Ark. 71, 189 S.W.2d 656 (1945).
- ² [Jennings v. Russell](#), 209 Ark. 71, 189 S.W.2d 656 (1945).
- ³ [Sealy v. Lake](#), 243 Ala. 396, 10 So. 2d 364 (1942) (recognizing doctrine); [Jennings v. Russell](#), 209 Ark. 71, 189 S.W.2d 656 (1945); [Humble Oil & Refining Co. v. Boudoin](#), 154 So. 2d 239 (La. Ct. App. 3d Cir. 1963), writ refused, 245 La. 54, 156 So. 2d 601 (1963) (recognizing rule); [Shean v. U.S. Fidelity & Guar. Co.](#), 263 Mich. 535, 248 N.W. 892 (1933).
- ⁴ [Hopkins v. Hopkins](#), 174 Miss. 643, 165 So. 414 (1936).
- ⁵ [Emeric v. Alvarado](#), 90 Cal. 444, 27 P. 356 (1891); [Haney v. Roy](#), 54 Mich. 635, 20 N.W. 621 (1884); [Kimball v. Schoff](#), 40 N.H. 190, 1860 WL 3208 (1860).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver One IV B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

B. Particular Relationships and Persons

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  28, 31, 98(2) to 98(4)

Primary Authority

[11 U.S.C.A. § 544\(a\)](#)

A.L.R. Library

A.L.R. Index, Collateral Estoppel, Equitable Estoppel

A.L.R. Index, Estoppel and Waiver

A.L.R. Index, Promissory Estoppel

West's A.L.R. Digest, [Estoppel](#)  28, 31, 98(2) to 98(4)

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28 Am. Jur. 2d Estoppel and Waiver § 122

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

B. Particular Relationships and Persons

§ 122. Purchaser, assignee, grantees, and vendees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  31, 98(2)

It has been held that a successor in interest claiming equitable estoppel must show his or her own entitlement to the benefit of the estoppel and that the entitlement is not established simply by purchasing the property.¹

Some authorities hold that a person who derives title from or through another party is ordinarily bound by every estoppel that would have bound the other party.² Thus, a party claiming title to certain real estate who took a contrary position in former litigation involving the same land is estopped from changing his or her position, and his or her assignees or successors in title are also bound by the estoppel.³

However, courts have also held that an estoppel ordinarily will not lie against grantees of a conveyance (such as purchasers of real property)⁴ or that it is only estoppel by deed that binds successors in interest.⁵ Thus, a bona fide purchaser without notice of an estoppel against his or her grantor generally is not bound by an estoppel against the grantor.⁶ In an action against a third party, the doctrine of estoppel by deed binds a grantor and his or her privies but does not bind the grantee of a deed.⁷

On the other hand, an estoppel may be asserted against a purchaser who has knowledge of facts that would give rise to estoppel against his or her vendor.⁸ As a result, a purchaser of property may not be bound by the vendor's alleged representations to purchasers of adjoining property from the same vendor about how the property would be developed when the purchaser was unaware of the representations and the deed contained no such covenant.⁹ However, a purchaser is charged with at least constructive knowledge of the existence of recorded interests.¹⁰ Thus, if a purchaser takes title with the knowledge, either

actual or constructive, of estoppel under a promise made by the vendor that the real estate would always be used for residential purposes, the purchaser too is estopped.¹¹

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Footnotes

- 1 Franklin County v. Leisure Properties, Ltd. by Brown, 430 So. 2d 475 (Fla. Dist. Ct. App. 1st Dist. 1983).
- 2 Greenan v. Solomon, 252 Va. 50, 472 S.E.2d 54 (1996).
An easement by estoppel, once created, is binding upon successors in title if reliance upon the existence of the easement continues. Holden v. Weidenfeller, 929 S.W.2d 124 (Tex. App. San Antonio 1996), writ denied, (Jan. 31, 1997).
- 3 Gilley v. Jernigan, 597 S.W.2d 313 (Tenn. Ct. App. 1979).
- 4 Evans v. Wittorff, 869 S.W.2d 872 (Mo. Ct. App. S.D. 1994).
- 5 Holm v. C.M.P. Sheet Metal, Inc., 89 A.D.2d 229, 455 N.Y.S.2d 429 (4th Dep't 1982).
- 6 Scureman v. Judge, 626 A.2d 5 (Del. Ch. 1992), *aff'd*, 628 A.2d 85 (Del. 1993); Evans v. Wittorff, 869 S.W.2d 872 (Mo. Ct. App. S.D. 1994).
- 7 1924 Leonard Road, L.L.C. v. Van Roekel, 272 Va. 543, 636 S.E.2d 378 (2006).
- 8 Bratt v. Peterson, 31 Wis. 2d 447, 143 N.W.2d 538 (1966).
- 9 Scureman v. Judge, 626 A.2d 5 (Del. Ch. 1992), *aff'd*, 628 A.2d 85 (Del. 1993).
- 10 Myers v. Key Bank, N.A., 113 A.D.2d 244, 495 N.Y.S.2d 755 (3d Dep't 1985), *order aff'd*, 68 N.Y.2d 744, 506 N.Y.S.2d 327, 497 N.E.2d 694 (1986).
- 11 Johnson v. Pattison, 185 N.W.2d 790 (Iowa 1971).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 123

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

B. Particular Relationships and Persons

§ 123. Successors in interest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  31, 98(2) to 98(4)

A successor corporation must stand in privity with a defunct corporation under which it claims an interest in title.¹ Similarly, a person attempting to assert the defense of discharge in bankruptcy as a successor in interest to a corporate bankrupt is bound by any judicial admission that would have been binding on the bankrupt.²

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Footnotes

- 1 [Grand Lodge Independent Order of Odd Fellows of Nebraska v. Marvin](#), 220 Neb. 197, 369 N.W.2d 54 (1985).
- 2 [Rosenberg v. Rosenberg](#), 123 Ariz. 589, 601 P.2d 589 (1979).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 124

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

B. Particular Relationships and Persons

§ 124. Creditors

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  31, 98(4)

As a general rule, one who becomes a creditor of a party estopped after the estoppel arises is likewise bound by the estoppel,¹ but an existing creditor is not bound by a subsequent equitable estoppel against the debtor.²

In practice, the extent to which a creditor is bound by an estoppel against a debtor, or is entitled to raise an estoppel in favor of the debtor, depends on the facts of the case, and thus, a creditor who had nothing to do with creating defective lien notices was held not estopped from attacking the validity of the lien notices.³ On the other hand, only a borrower possesses the defense that a lender waived a ground for declaring a loan in default, so the waiver does not give rise to an estoppel that may be raised by the borrower's other creditors.⁴

A creditor participating in an assignment for the benefit of creditors is generally estopped to impeach the validity of the assignment where the creditors have acted in a manner that implied an acceptance of the assignment.⁵ However, a bankruptcy trustee is not estopped by assertions made by creditors' committee in the absence of privity between the creditors' committee and the trustee.⁶

Caution:

The section of the federal bankruptcy law dealing with the avoidance powers of the bankruptcy trustee⁷ vests the trustee with the rights of an ideal creditor, without knowledge or notice, for the purpose of preventing defenses such as estoppel from being raised against the trustee.⁸

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Footnotes

- 1 [Matter of Pubs, Inc. of Champaign](#), 618 F.2d 432, 28 U.C.C. Rep. Serv. 297 (7th Cir. 1980); [Florida Land Holding Corp. v. McMillen](#), 135 Fla. 431, 186 So. 188 (1938).
- 2 [Equitable Loan & Sec. Co. v. Lewman](#), 124 Ga. 190, 52 S.E. 599 (1905).
- 3 [In re Williamson](#), 43 B.R. 813 (Bankr. D. Utah 1984).
- 4 [Federal Deposit Ins. Corp. v. Key Biscayne Development Ass'n](#), 858 F.2d 670 (11th Cir. 1988).
- 5 [Am. Jur. 2d, Assignments for Benefit of Creditors](#) § 118.
- 6 [In re Lotta Water Land Co.](#), 25 B.R. 32 (Bankr. N.D. Tex. 1982).
- 7 11 U.S.C.A. § 544(a).
- 8 [In re Howards Appliance Corp.](#), 91 B.R. 204, 7 U.C.C. Rep. Serv. 2d 263 (E.D. N.Y. 1988), judgment rev'd in part on other grounds, 874 F.2d 88, 8 U.C.C. Rep. Serv. 2d 344 (2d Cir. 1989).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 125

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

B. Particular Relationships and Persons

§ 125. Heirs and devisees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  28, 31, 98(3)

Because an heir is in privity with his or her ancestor, the heir is bound by an estoppel that was binding upon the ancestor¹ though some exceptions to that general rule are noted.² Thus, an heir is estopped by the deed,³ including the warranty deed,⁴ of an ancestor. Similarly, the doctrine of estoppel by deed applies to grantor's devisees.⁵ Because an heir, being in privity with the ancestor, is bound by an estoppel that was binding upon the ancestor, in a variety of situations in which an intestate would have been estopped with respect to property, his or her heir or distributee, as the successor in interest, is also estopped.⁶

However, estoppels do not operate against an heir as to property that was not inherited from the decedent who was estopped but was acquired from an independent source. Thus, an heir is not bound by such an estoppel with respect to property taken by inheritance from one other than the particular ancestor.⁷ Similarly, an heir who claims by purchase and not descent is not bound by a warranty given by his or her ancestor.⁸

An heir who knowingly conceals his or her rights in an estate may be estopped to assert his or her rights,⁹ and likewise, an heir entitled to oppose a claim may, by his or her conduct, be estopped from doing so.¹⁰ As a general rule, however, heirs are not estopped by the representations or conduct of coheirs.¹¹

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Footnotes

1 In re Trigg's Estate, 102 Ariz. 140, 426 P.2d 637 (1967); In re Adoption of Sewall, 242 Cal. App. 2d 208,
2 51 Cal. Rptr. 367 (4th Dist. 1966); Huning v. Potts, 90 N.M. 407, 564 P.2d 612 (1977) (recognizing rule).
3 Mansour v. Rabil, 277 N.C. 364, 177 S.E.2d 849 (1970); Peoples Nat. Bank of Greenville v. Manos Bros.,
4 Inc., 226 S.C. 257, 84 S.E.2d 857, 45 A.L.R.2d 1070 (1954).
5 Walker-Rogers Post No. 662, Veterans of Foreign Wars of U. S., Inc. v. Vigeant, 10 Mass. App. Ct. 860, 407
6 N.E.2d 1316 (1980); Duke v. Hopper, 486 S.W.2d 744 (Tenn. Ct. App. 1972).
7 Kentucky River Coal Corp. v. Jones, 441 S.W.2d 409 (Ky. 1969); Butler v. Butler, 212 So. 2d 213 (La. Ct.
8 App. 2d Cir. 1968), writ refused, 252 La. 877, 214 So. 2d 548 (1968).
9 Daley v. Hornbaker, 325 Pa. Super. 172, 472 A.2d 703 (1984).
10 Am. Jur. 2d, Descent and Distribution § 37.
11 Am. Jur. 2d, Descent and Distribution § 37.
McSwain v. Griffin, 218 Miss. 517, 67 So. 2d 479 (1953); Cook v. Daniels, 306 S.W.2d 573 (Mo. 1957).
Am. Jur. 2d, Executors and Administrators § 986.
Am. Jur. 2d, Executors and Administrators § 635.
Halcomb v. Simpson, 301 Ky. 55, 190 S.W.2d 855 (1945).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 126

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

B. Particular Relationships and Persons

§ 126. Executors and administrators

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  28, 31, 98(3)

A decedent and the personal representative of the decedent's estate are in sufficient privity that an estoppel arising from the decedent's conduct may be asserted against the representative.¹ In other words, if the decedent would have been estopped, his or her estate is estopped.²

Thus, a false representation that operates to estop the person who made it by reason of reliance thereon by another is grounds for an estoppel against the executor or administrator of the person's estate.³ Likewise, an estoppel to deny the validity of the adoption of a child is binding upon the personal representative of the adoptive parent,⁴ and the doctrine of estoppel by deed applies to a grantor's executors and administrators.⁵

While generally the relation of privity does not exist between an administrator and the distributees of an estate, and therefore, there can ordinarily be no estoppel of an administrator by any action or nonaction of a distributee,⁶ the factual situation may call for an exception.⁷ In addition, the acts of an executor or administrator in his or her individual capacity generally do not estop him or her in his or her representative capacity.⁸

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Footnotes

- 1 In re Trigg's Estate, 102 Ariz. 140, 426 P.2d 637 (1967); *Waugh v. Lennard*, 69 Ariz. 214, 211 P.2d 806
(1949); *Peterson v. Spohrer*, 257 So. 2d 284 (Fla. Dist. Ct. App. 3d Dist. 1972); *Penn v. Pemberton & Penn,*
Inc., 189 Va. 649, 53 S.E.2d 823 (1949).
An estoppel that would have bound a decedent binds his or her personal representative. *Rafkind v. Simon*,
402 So. 2d 22 (Fla. Dist. Ct. App. 3d Dist. 1981).
- 2 In re Jamison's Estate, 202 S.W.2d 879 (Mo. 1947).
- 3 *Penn v. Pemberton & Penn, Inc.*, 189 Va. 649, 53 S.E.2d 823 (1949).
- 4 Am. Jur. 2d, Adoption § 144.
- 5 *Daley v. Hornbaker*, 325 Pa. Super. 172, 472 A.2d 703 (1984).
- 6 *Matter of Herm's Estate*, 284 N.W.2d 191 (Iowa 1979); *Broom's Adm'r v. National Auto Sales*, 246 S.W.2d
1008 (Ky. 1952).
- 7 *Broom's Adm'r v. National Auto Sales*, 246 S.W.2d 1008 (Ky. 1952).
- 8 *Crisman v. Lanterman*, 149 Cal. 647, 87 P. 89 (1906); *Morton v. Preston*, 18 Mich. 60, 1869 WL 2147 (1869).

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28 Am. Jur. 2d Estoppel and Waiver One IV C Refs.

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel


IV. Persons Subject to, or Affected by, Estoppel

C. The Public; Governmental Entities, Subdivisions, and Agencies

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.1 to 62.8

Primary Authority

[31 U.S.C.A. § 3730](#)

A.L.R. Library

A.L.R. Index, Collateral Estoppel, Equitable Estoppel

A.L.R. Index, Estoppel and Waiver

A.L.R. Index, Promissory Estoppel

West's A.L.R. Digest, [Estoppel](#)  62.1 to 62.8

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28 Am. Jur. 2d Estoppel and Waiver § 127

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

C. The Public; Governmental Entities, Subdivisions, and Agencies

1. In General

§ 127. Generally; estoppel against government

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  [62.1](#), [62.6](#) to [62.8](#)

A.L.R. Library

[Estoppel of state or local government in tax matters, 21 A.L.R.4th 573](#)

[Estoppel of United States, state, or political subdivision by deed or other instrument, 23 A.L.R.2d 1419](#)

[Comment Note.— Applicability of doctrine of estoppel against government and its governmental agencies, 1 A.L.R.2d 338](#)

Although the doctrine of estoppel is available against the government where justice and right require it,¹ a court applies estoppel against a government entity only in rare cases.² Courts have variously stated that estoppel against a governmental entity or agency—

— requires a stronger showing than when asserted against an individual.³

— is limited and may be invoked only with great caution.⁴

— cannot be invoked against a governmental agency to prevent it from discharging its statutory duties.⁵

- is not available against a governmental agency in the exercise of its governmental functions.⁶
 - must be applied in a rigid⁷ and sparing manner.⁸
 - should not be invoked in the absence of special or exceptional circumstances.⁹
 - may not be raised based on unauthorized, ultra vires, negligent, or fraudulent acts of government officials or agents¹⁰ unless the government officially acquiesces in and approves of the act.¹¹
- Estoppel cannot be used to establish a duty on the part of the public where none exists by law.¹²

Practice Tip:

Sovereign immunity is a jurisdictional question not to be undermined by estoppel.¹³

CUMULATIVE SUPPLEMENT

Cases:

A party seeking to raise estoppel against the government must establish affirmative misconduct going beyond mere negligence; even then, estoppel will only apply where the government's wrongful act will cause a serious injustice, and the public's interest will not suffer undue damage by imposition of the liability. [Perez-Mejia v. Holder](#), 663 F.3d 403 (9th Cir. 2011).

District of Columbia was estopped from asserting in its motion for summary judgment that a one-year limitations period applied to plaintiff's Rehabilitation Act claim against the District, where the District could have, but failed to, assert that claim in its two prior motions challenging the timeliness of plaintiff's claim. Rehabilitation Act of 1973, § 501 et seq., 29 U.S.C.A. § 791 et seq. [Featherston v. District of Columbia](#), 908 F. Supp. 2d 153 (D.D.C. 2012).

In addition to the traditional elements of equitable estoppel, a litigant asserting estoppel against the government must establish some type of affirmative misconduct by the government; further, there is a strong, but rebuttable, presumption that administrators of the military, like other public officers, discharge their duties correctly, lawfully, and in good faith. [Warner v. U.S.](#), 2012 WL 453235 (Ct. Fed. Cl. 2012).

City retirees were never promised a particular healthcare benefit level, especially for life, as required to support a claim for benefits under an estoppel theory; any reliance on prior settlements would not have been reasonable because those agreements expired by their own terms and could not have supported a claim for lifetime benefits at the levels sought by retirees. [Underwood v. City of Chicago](#), 2017 IL App (1st) 162356, 416 Ill. Dec. 438, 84 N.E.3d 420 (App. Ct. 1st Dist. 2017), appeal denied, 2017 WL 5635847 (Ill. 2017).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Doe v. California Dept. of Justice](#), 173 Cal. App. 4th 1095, 93 Cal. Rptr. 3d 736 (4th Dist. 2009), review denied, (July 22, 2009).
Justice may require estoppel against the government if that is the only available remedy, and conversely, the existence of alternative remedies weighs strongly against the doctrine. [City of White Settlement v. Super Wash, Inc.](#), 198 S.W.3d 770 (Tex. 2006).
As a general proposition, a governmental agency may be estopped from asserting a claim inconsistent with a previous position that it has taken. [Kucera v. Bradbury](#), 337 Or. 384, 97 P.3d 1191 (2004).
- 2 [Cold Brook Fire Dist. v. Adams](#), 183 Vt. 614, 2008 VT 28, 950 A.2d 1206 (2008).
- 3 [Patterson v. State Bd. of Optometry](#), 668 S.W.2d 240 (Mo. Ct. App. E.D. 1984); [In re Estate of Leitham](#), 726 A.2d 1116 (Pa. Commw. Ct. 1999); [Wisconsin Dept. of Revenue v. Moebius Printing Co.](#), 89 Wis. 2d 610, 279 N.W.2d 213 (1979).
Some stronger, more compelling policy or interest must be advanced before estoppel may be invoked against either the State or a public agency. [Strong v. State ex rel. The Oklahoma Police Pension and Retirement Bd.](#), 2005 OK 45, 115 P.3d 889 (Okla. 2005).
- 4 [Fadner v. Commissioner of Revenue Services](#), 281 Conn. 719, 917 A.2d 540 (2007).
- 5 [Schorr v. New York City Dept. of Housing Preservation and Development](#), 10 N.Y.3d 776, 857 N.Y.S.2d 1, 886 N.E.2d 762 (2008).
Estoppel is not applied against the government in the exercise of its public duties or against the enforcement of a statute. [Del Gallo v. Secretary of Com.](#), 442 Mass. 1032, 816 N.E.2d 108 (2004).
- 6 [Las Vegas Convention and Visitors Authority v. Miller](#), 191 P.3d 1138 (Nev. 2008); [In re Village Of Fleischmanns](#), 77 A.D.3d 1146, 909 N.Y.S.2d 564 (3d Dep't 2010).
- 7 [Marinangeli v. Lehman](#), 32 F. Supp. 2d 1 (D.D.C. 1998).
- 8 [Plymouth Foam Products, Inc. v. City of Becker, Minn.](#), 120 F.3d 153 (8th Cir. 1997) (applying Minnesota law); [Marinangeli v. Lehman](#), 32 F. Supp. 2d 1 (D.D.C. 1998); [Loigman v. Township Committee of the Tp. of Middletown](#), 297 N.J. Super. 287, 687 A.2d 1091 (App. Div. 1997).
- 9 [State v. Dupier](#), 118 P.3d 1039 (Alaska 2005) (as a means to avoid injustice); [Citrus County v. Halls River Development, Inc.](#), 8 So. 3d 413 (Fla. Dist. Ct. App. 5th Dist. 2009), review denied, 23 So. 3d 712 (Fla. 2009); [Circus Liquors, Inc. v. Governing Body of Middletown Tp.](#), 398 N.J. Super. 220, 941 A.2d 616 (App. Div. 2008), judgment rev'd on other grounds, 199 N.J. 1, 970 A.2d 347 (2009).
While equitable estoppel can be invoked against a governmental entity in unique circumstances, a court must find that exceptional and extraordinary equities are involved to invoke that doctrine. [Sebastian-Voor Properties, LLC v. Lexington-Fayette Urban County Government](#), 265 S.W.3d 190 (Ky. 2008).
- 10 [Citrus County v. Halls River Development, Inc.](#), 8 So. 3d 413 (Fla. Dist. Ct. App. 5th Dist. 2009), review denied, 23 So. 3d 712 (Fla. 2009) (does not generally apply to transactions that are forbidden by law or contrary to public policy); [Akmakjian v. Department of Professional Regulation](#), 229 Ill. Dec. 694, 692 N.E.2d 683 (App. Ct. 1st Dist. 1997); [Waterman v. Caprio](#), 983 A.2d 841 (R.I. 2009) (ultra vires acts); [S & H Marketing Group, Inc. v. Sharp](#), 951 S.W.2d 265 (Tex. App. Austin 1997).
Estoppel against a public agency is limited and may be invoked only when the action in question has been induced by an agent having authority in such matters. [Fadner v. Commissioner of Revenue Services](#), 281 Conn. 719, 917 A.2d 540 (2007).
- 11 [Agrex, Inc. v. City of Superior](#), 7 Neb. App. 237, 581 N.W.2d 428 (1998).
- 12 [Maddox v. Hayes](#), 278 Ga. 141, 598 S.E.2d 505 (2004).
- 13 [Lorenz v. New Hampshire Administrative Office of the Courts](#), 152 N.H. 632, 883 A.2d 265 (2005), as modified, (Feb. 16, 2006).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 128

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

C. The Public; Governmental Entities, Subdivisions, and Agencies

1. In General

§ 128. Proprietary or sovereign function

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.1

A.L.R. Library

[Estoppel of state or local government in tax matters](#), 21 A.L.R.4th 573

A litigant asserting estoppel against the government bears a heavy burden,¹ particularly when the government acts in a sovereign or governmental role rather than a proprietary role.² In fact, it has been held that estoppel may not be applied against the government acting in its sovereign capacity.³ However, some courts do not apply a rigid distinction between sovereign and proprietary activities in determining the applicability of estoppel against the government⁴ but instead hold that estoppel may be applied against the government even while exercising governmental functions under appropriate circumstances.⁵

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Footnotes

¹ [State v. Lee](#), 584 N.W.2d 11 (Minn. Ct. App. 1998).

² [Green v. U.S.](#), 8 F. Supp. 2d 983 (W.D. Mich. 1998) (recognizing rule with respect to the federal government).

- 3 [Sagewillow, Inc. v. Idaho Dept. of Water Resources](#), 138 Idaho 831, 70 P.3d 669 (2003) (equitable estoppel); [Maryland Transp. Authority Police Lodge No. 34 of Fraternal Order of Police, Inc. v. Maryland Transp. Authority](#), 195 Md. App. 124, 5 A.3d 1174 (2010), cert. granted, 417 Md. 500, 10 A.3d 1180 (2011); [Las Vegas Convention and Visitors Authority v. Miller](#), 191 P.3d 1138 (Nev. 2008).
- 4 [Mesaba Aviation Division of Halvorson of Duluth, Inc. v. Itasca County](#), 258 N.W.2d 877 (Minn. 1977).
Just as sovereign immunity has been modified in recent years, so too have the courts yielded the great reluctance previously exhibited against applying the estoppel doctrine to the government. [In re Estate of Leitham](#), 726 A.2d 1116 (Pa. Commw. Ct. 1999).
As to the distinction between sovereign and property functions with respect to the federal government, see § 143.
- 5 [Stahelin v. Board of Ed., School Dist. No. 4, DuPage County](#), 87 Ill. App. 2d 28, 230 N.E.2d 465 (2d Dist. 1967); [Wisconsin Dept. of Revenue v. Moebius Printing Co.](#), 89 Wis. 2d 610, 279 N.W.2d 213 (1979).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 129

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

C. The Public; Governmental Entities, Subdivisions, and Agencies

1. In General

§ 129. Limitations on application of estoppel to government

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.1, 62.2(1)

Courts have held that an estoppel against the government may be raised only when—

— the injury to the public interest if the government is estopped is outweighed by the injury to the plaintiff's personal interest¹ or the injustice that would arise² if the government is not estopped.

— raising the estoppel prevents manifest or grave injustice.³

— raising the estoppel will not frustrate a policy intended to protect the public interest.⁴

— the performance of government functions is estopped.⁵

— circumstances make it highly inequitable or oppressive not to estop the government.⁶

— the government's conduct works a serious injury and the public's interest will not be harmed by the imposition of estoppel.⁷

CUMULATIVE SUPPLEMENT

Cases:

Department of Environmental Quality's (DEQ) duty to enforce the Solid Waste Management Act and its accompanying regulations was a police power, and thus could not be impaired by estoppel, since the Act served important interests in terms of regulating the storage and disposal of solid waste in order to protect the public health, safety, and welfare. [N.C. Gen. Stat. Ann. § 130A-291](#). [N.C. Department of Environmental Quality, Division of Waste Management v. TRK Development, LLC](#), 816 S.E.2d 232 (N.C. Ct. App. 2018).

To assert estoppel against a governmental entity, a claimant must generally show that the entity made very clear, well-substantiated representations. [Myers v. Utah Transit Authority](#), 2014 UT App 294, 341 P.3d 935 (Utah Ct. App. 2014).

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Footnotes

- 1 [Golden Day Schools, Inc. v. Department of Education](#), 69 Cal. App. 4th 681, 81 Cal. Rptr. 2d 758, 131 Ed. Law Rep. 808 (3d Dist. 1999).
- 2 [In re Lyon](#), 178 Vt. 232, 2005 VT 63, 882 A.2d 1143 (2005).
- 3 [People ex rel. State Air Resources Bd. v. Wilmshurst](#), 68 Cal. App. 4th 1332, 81 Cal. Rptr. 2d 221 (3d Dist. 1999); [Missouri Gas Energy v. Public Service Com'n, State of Mo.](#), 978 S.W.2d 434 (Mo. Ct. App. W.D. 1998); [State ex rel. Nebraska Health Care Ass'n v. Department of Health and Human Services Finance and Support](#), 255 Neb. 784, 587 N.W.2d 100 (1998).
- 4 [Del Gallo v. Secretary of Com.](#), 442 Mass. 1032, 816 N.E.2d 108 (2004).
- 5 [Chanos v. Nevada Tax Com'n](#), 181 P.3d 675 (Nev. 2008).
- 6 [Fadner v. Commissioner of Revenue Services](#), 281 Conn. 719, 917 A.2d 540 (2007).
- 7 [Wisconsin Dept. of Revenue v. Moebius Printing Co.](#), 89 Wis. 2d 610, 279 N.W.2d 213 (1979).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 130

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel


C. The Public; Governmental Entities, Subdivisions, and Agencies

1. In General

§ 130. Mistake or misrepresentation; reliance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.1, 62.2(1)

A.L.R. Library

[Estoppel of state or local government in tax matters](#), 21 A.L.R.4th 573

In general, an estoppel cannot be asserted against a government entity based on mistaken statements of law¹ nor should a public officer's failure to enforce a statute correctly inhibit correct enforcement of the statute or estop more diligent enforcement.² It has been held that mistaken advice or opinions of a governmental official do not give rise to a claim of promissory estoppel³ and that the doctrine of estoppel is unavailable against a public agency based on an inconsistent statement of a public officer.⁴ However, it has also been held that when an officer of a public agency makes an agreement or gives an assurance, the public agency is estopped from denying the agreement or assurance.⁵

A government agency's conduct may amount to a false representation or concealment of material facts, for purposes of equitable estoppel, where it makes representations that are contrary to the essential facts to be relied on even when made innocently or by mistake.⁶

Reliance on a misstatement by a government agency for purposes of estoppel is not reasonable if the governmental actor had no authority to make the misstatement.⁷ A party contracting with the government is on constructive notice of the limits of the government agent's authority and cannot reasonably rely, as an element of estoppel, on representations to the contrary.⁸ When an agent of the government whose representations are relied upon plainly lacks the authority to do whatever he or she has promised, the promisee's reliance cannot be reasonable, as an element of estoppel, because a person making or seeking to make a contract with the government is charged with knowledge of the limits of the agency's, or its agent's, actual authority.⁹

Additionally, an entity relying on representations of a public official does so at its peril as such reliance is not sufficient to excuse ignorance of the law as it actually exists.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Evidence was sufficient to support finding that racing commission reasonably expected racing official to rely upon alleged promise of reinstatement so as to support official's promissory estoppel claim based on commission's failure to reinstatement official following termination of employment; administrator of racing, the executive officer of the commission, testified that he posed the question regarding reinstatement of official to the commission, and that the commission members looked at each other and then said "Yes." [Harmon v. State, Delaware Harness Racing Com'n, 62 A.3d 1198 \(Del. 2013\)](#).

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Footnotes

- 1 [Ammons v. Okeechobee County, 710 So. 2d 641 \(Fla. Dist. Ct. App. 4th Dist. 1998\)](#).
Estoppel will not lie against a government entity where a government employee gives erroneous information in contradiction of statute; simply stated, equity follows the law. [Quail Hill, LLC v. County of Richland, 387 S.C. 223, 692 S.E.2d 499 \(2010\)](#).
- 2 [Eicher v. Louisiana State Police, Riverboat Gaming Enforcement Div., 710 So. 2d 799 \(La. Ct. App. 1st Cir. 1998\)](#), writ denied, [719 So. 2d 51 \(La. 1998\)](#).
An administrative agency's acquiescence at an earlier time does not estop it from enforcing a law at a later date. [Longview Fibre Co. v. State, Dept. of Ecology, 89 Wash. App. 627, 949 P.2d 851 \(Div. 2 1998\)](#).
- 3 [Drake v. Medical College of Ohio, 120 Ohio App. 3d 493, 698 N.E.2d 463, 128 Ed. Law Rep. 330 \(10th Dist. Franklin County 1997\)](#).
- 4 [Legal Aid Soc. v. City of New York, 242 A.D.2d 423, 662 N.Y.S.2d 303 \(1st Dep't 1997\)](#).
- 5 [City of Wetumpka v. Central Elmore Water Authority, 703 So. 2d 907 \(Ala. 1997\)](#).
- 6 [Waters-Haskins v. New Mexico Human Services Dept., Income Support Div., 2009-NMSC-031, 146 N.M. 391, 210 P.3d 817 \(2009\)](#).
- 7 [Kucera v. Bradbury, 337 Or. 384, 97 P.3d 1191 \(2004\)](#).
- 8 [District of Columbia v. Brookstowne Community Development Co., 987 A.2d 442 \(D.C. 2010\)](#).
- 9 [District of Columbia v. Brookstowne Community Development Co., 987 A.2d 442 \(D.C. 2010\)](#).
- 10 [In re Initiative Petition No. 379, State Question No. 726, 2006 OK 89, 155 P.3d 32 \(Okla. 2006\)](#).

28 Am. Jur. 2d Estoppel and Waiver § 131

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

C. The Public; Governmental Entities, Subdivisions, and Agencies

1. In General

§ 131. Equitable estoppel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.1, 62.2(1)

As a general rule, equitable estoppel will not be applied against governmental authorities.¹ Courts have thus specified that equitable estoppel against a government entity is not favored² and is rarely available.³ The courts do not apply equitable estoppel as freely against governmental agencies as they do in the case of private persons.⁴ A person seeking to invoke the doctrine of equitable estoppel against a government body bears a heavy burden.⁵ Generally, equitable estoppel is unavailable against the government except in unusual instances⁶ or compelling⁷ or exceptional circumstances,⁸ and exceptional and extraordinary equities must be involved,⁹ such as preventing manifest or grave injustice¹⁰ or affirmative misconduct,¹¹ but the application must not impair government functions¹² or defeat a strong public policy.¹³

Observation:

A current governmental official is not duty-bound by equitable estoppel to continue the improper acts of predecessors.¹⁴

The party seeking equitable estoppel against the government must establish its traditional elements¹⁵ and, in addition to the elements that apply when asserting the doctrine against nongovernmental persons, must establish that equitable estoppel: (1) is necessary to prevent a manifest injustice and (2) would not impair the exercise of governmental functions.¹⁶

It has been said that equitable estoppel may only be used against a public entity when an entity actively misled or deceived an individual with the intent to have the individual alter his or her position to his or her detriment.¹⁷ When reviewing an equitable estoppel defense against a governmental agency, a court considers the totality of the circumstances including the nature of the government official or agency whose actions provide the basis for the claim and the governmental function being discharged by that official or agency.¹⁸ Courts must determine the degree to which an agency is acting under its own discretionary authority to determine whether the doctrine of equitable estoppel can bar the agency's action.¹⁹

CUMULATIVE SUPPLEMENT

Cases:

The general rule is that equitable estoppel is not available as a defense against the government, especially when the government is acting in its sovereign, as opposed to its proprietary, capacity. [Candor v. U.S., 1 F. Supp. 3d 1076 \(S.D. Cal. 2014\)](#).

To prove equitable estoppel against a governmental entity, the party asserting it must demonstrate that (1) the governmental official or agency made misrepresentations, whether by misleading statements, conduct, or silence, that induced the party to act, (2) the party relied on the government's misrepresentations to his or her detriment, and (3) the party's reliance was reasonable. [State v. Brown, 2014 ME 79, 95 A.3d 82 \(Me. 2014\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Story Bed & Breakfast, LLP v. Brown County Area Plan Com'n, 819 N.E.2d 55 \(Ind. 2004\); In re S.A.P., 156 S.W.3d 574 \(Tex. 2005\)](#).
With respect to governmental agencies functioning in their governmental capacities, not as employer or in proprietary capacity, the standard for equitable estoppel is higher, requiring even more egregious conduct. [Knori v. State, ex rel., Dept. of Health, Office of Medicaid, 2005 WY 48, 109 P.3d 905 \(Wyo. 2005\)](#).
- 2 [Office of Hawaiian Affairs v. Housing and Community Development Corp. of Hawaii \(HCDCH\), 117 Haw. 174, 177 P.3d 884 \(2008\)](#), rev'd on other grounds and remanded on other grounds, 129 S. Ct. 1436, 173 L. Ed. 2d 333 (2009) and appeal reopened on other grounds, 2009 WL 1449040 (Haw. 2009); [Pacific Land Partners, LLC v. State, Dept. of Ecology, 150 Wash. App. 740, 208 P.3d 586 \(Div. 3 2009\)](#), review denied, 167 Wash. 2d 1007, 220 P.3d 209 (2009).
- 3 [Board of Trustees, Kentucky Retirement Systems v. Grant, 257 S.W.3d 591 \(Ky. Ct. App. 2008\)](#); [Township of Middletown v. Simon, 193 N.J. 228, 937 A.2d 949 \(2008\)](#).
- 4 [Village of Hobart v. Brown County, 2005 WI 78, 281 Wis. 2d 628, 698 N.W.2d 83 \(2005\)](#).
- 5 [ABC Disposal Systems, Inc. v. Department Of Natural Resources, 681 N.W.2d 596 \(Iowa 2004\)](#).
- 6 [Steinhart v. County of Los Angeles, 47 Cal. 4th 1298, 104 Cal. Rptr. 3d 195, 223 P.3d 57 \(2010\)](#).
- 7 [Estate of McElwee v. Omaha Transit Authority, 266 Neb. 317, 664 N.W.2d 461 \(2003\)](#).
- 8 [Fennelly v. A-1 Machine & Tool Co., 728 N.W.2d 163 \(Iowa 2006\)](#); [Vandertoll v. Com., 110 S.W.3d 789 \(Ky. 2003\)](#).

- 9 Sebastian-Voor Properties, LLC v. Lexington-Fayette Urban County Government, 265 S.W.3d 190 (Ky. 2008).
- 10 Steinhart v. County of Los Angeles, 47 Cal. 4th 1298, 104 Cal. Rptr. 3d 195, 223 P.3d 57 (2010); Estate of McElwee v. Omaha Transit Authority, 266 Neb. 317, 664 N.W.2d 461 (2003); Aqua Beach Condominium Ass'n v. Department of Community Affairs, Bureau of Homeowner Protection, New Home Warranty Program, 186 N.J. 5, 890 A.2d 922 (2006); Pacific Land Partners, LLC v. State, Dept. of Ecology, 150 Wash. App. 740, 208 P.3d 586 (Div. 3 2009), review denied, 167 Wash. 2d 1007, 220 P.3d 209 (2009).
- 11 District of Columbia v. Brookstowne Community Development Co., 987 A.2d 442 (D.C. 2010); Knori v. State, ex rel., Dept. of Health, Office of Medicaid, 2005 WY 48, 109 P.3d 905 (Wyo. 2005); Bell v. Schell, 2004 WY 153, 101 P.3d 465 (Wyo. 2004).
- 12 Union County v. CGP, Inc., 277 Ga. 349, 589 S.E.2d 240 (2003); Hortman v. Miamisburg, 110 Ohio St. 3d 194, 2006-Ohio-4251, 852 N.E.2d 716 (2006); Pacific Land Partners, LLC v. State, Dept. of Ecology, 150 Wash. App. 740, 208 P.3d 586 (Div. 3 2009), review denied, 167 Wash. 2d 1007, 220 P.3d 209 (2009).
- 13 Steinhart v. County of Los Angeles, 47 Cal. 4th 1298, 104 Cal. Rptr. 3d 195, 223 P.3d 57 (2010); Knori v. State, ex rel., Dept. of Health, Office of Medicaid, 2005 WY 48, 109 P.3d 905 (Wyo. 2005).
A party claiming equitable estoppel against a governmental entity must show that estoppel is not inconsistent with the public interest, and this interest must be weighed and balanced against the equities of the circumstances. *In re Municipal Boundaries of City of Southaven*, 864 So. 2d 912 (Miss. 2003).
- 14 Sebastian-Voor Properties, LLC v. Lexington-Fayette Urban County Government, 265 S.W.3d 190 (Ky. 2008).
- 15 *In re Lyon*, 178 Vt. 232, 2005 VT 63, 882 A.2d 1143 (2005); *State v. Yates*, 161 Wash. 2d 714, 168 P.3d 359 (2007).
- 16 *State v. Yates*, 161 Wash. 2d 714, 168 P.3d 359 (2007).
- 17 *Dakota Truck Underwriters v. South Dakota Subsequent Injury Fund*, 2004 SD 120, 689 N.W.2d 196 (S.D. 2004).
- 18 *Department of Health and Human Services v. Pelletier*, 2009 ME 11, 964 A.2d 630 (Me. 2009).
- 19 *Waters-Haskins v. New Mexico Human Services Dept., Income Support Div.*, 2009-NMSC-031, 146 N.M. 391, 210 P.3d 817 (2009).

28 Am. Jur. 2d Estoppel and Waiver § 132

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

C. The Public; Governmental Entities, Subdivisions, and Agencies

1. In General

§ 132. Estoppel in favor of government

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  [62.1](#), [62.2\(1\)](#) to [62.4](#)

An estoppel may operate in favor of the public.¹ In fact, it is said that an estoppel in favor of a public interest will be raised upon circumstances slighter than are requisite to raise an estoppel in favor of an individual.²

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Footnotes

- ¹ [Hooper v. Haas](#), 332 Ill. 561, 164 N.E. 23, 63 A.L.R. 658 (1928); [Obion County v. McKinnis](#), 211 Tenn. 183, 364 S.W.2d 356 (1962).
- ² [Brusha v. Board of Ed. of Oklahoma City](#), 1913 OK 211, 41 Okla. 595, 139 P. 298 (1913); [Obion County v. McKinnis](#), 211 Tenn. 183, 364 S.W.2d 356 (1962).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 133

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel


C. The Public; Governmental Entities, Subdivisions, and Agencies

1. In General

§ 133. Between two agencies

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  [62.1](#), [62.2\(.5\)](#)

A.L.R. Library

[Comment Note.—Applicability of doctrine of estoppel against government and its governmental agencies, 1 A.L.R.2d 338](#)

Estoppel may be applied to a controversy between two or more public bodies or agencies.¹ However, where two public agencies' interests conflict, there is no privity, which is required for the acts of one agency to estop other.²

Observation:

For the purposes of equitable estoppel, a state court is not the same party as a state administrative agency.³

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Footnotes

- 1 [City of Grand Island v. Willis](#), 142 Neb. 686, 7 N.W.2d 457 (1943).
Estoppel will be applied against a state college in a controversy between the college and a governmental subdivision. [Silver City Consol. School Dist. No. 1 v. Board of Regents of New Mexico Western College](#), 75 N.M. 106, 401 P.2d 95 (1965).
- 2 [Hudson v. Board of Admin. of Public Employees' Retirement System](#), 59 Cal. App. 4th 1310, 69 Cal. Rptr. 2d 737 (4th Dist. 1997).
As to privity, generally, see §§ 118, 119.
- 3 [Patterson v. State Bd. of Optometry](#), 668 S.W.2d 240 (Mo. Ct. App. E.D. 1984).
As to the rule that estoppel only applies between parties to the transaction from which it arises and their privies, see § 118.

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 134

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel


C. The Public; Governmental Entities, Subdivisions, and Agencies

1. In General

§ 134. Judicial bodies

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.2(1)

A judicial body may not be estopped from reversing its decisions.¹

Observation:

The operation of estoppel against a governmental agency (such as a state revenue agency) after an agency employee allegedly gave erroneous advice does not violate the separation of powers doctrine by allowing the agency to make an erroneous determination that is immune from judicial revision.²

An estoppel in that instance does not give the agency the judicial power to interpret the law in any case before the courts, nor does estoppel give the agency the authority to determine when, where, or in what situation the estoppel should be recognized.³ On the other hand, because of the implications of the separation of powers doctrine, courts should negate the action of a city legislature only for the most compelling reasons when necessary to avoid unconscionable results.⁴

For the purposes of equitable estoppel, a state court is not the same party as a state administrative agency.⁵

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Footnotes

- 1 [Marathon Oil Co. v. ARCO Alaska, Inc., 972 P.2d 595 \(Alaska 1999\).](#)
- 2 [Valencia Energy Co. v. Arizona Dept. of Revenue, 191 Ariz. 565, 959 P.2d 1256 \(1998\).](#)
[As to erroneous advice or legal statements by governmental officials, generally, see § 130.](#)
- 3 [Valencia Energy Co. v. Arizona Dept. of Revenue, 191 Ariz. 565, 959 P.2d 1256 \(1998\).](#)
- 4 [State v. Lee, 584 N.W.2d 11 \(Minn. Ct. App. 1998\).](#)
- 5 [§ 133.](#)

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 135

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

C. The Public; Governmental Entities, Subdivisions, and Agencies


2. States

a. In General

§ 135. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.2(1), 62.2(2)

A.L.R. Library

[Estoppel of state or local government in tax matters](#), 21 A.L.R.4th 573

[Estoppel of United States, state, or political subdivision by deed or other instrument](#), 23 A.L.R.2d 1419

[Comment Note.—Applicability of doctrine of estoppel against government and its governmental agencies](#), 1 A.L.R.2d 338

As is the case with government generally,¹ while a State or its political subdivisions may be subject to estoppel,² it is not subject to the same extent as a private individual or private corporation.³ In general, a State or state agency may not be estopped from discharging its statutory duty,⁴ nor will the doctrine of equitable estoppel be used in such a way as to hinder the State in the exercise of its sovereign power.⁵ Similarly, the doctrine of estoppel ordinarily does not apply against the State or state agencies with respect to the performance of governmental functions.⁶ Thus, estoppel is generally not available against the State and its agencies acting in a sovereign capacity unless the application of equitable defenses would further a principle of public policy or interest.⁷

While states are not immune from claims involving estoppel,⁸ the application of the doctrine of estoppel against states has been described as very limited⁹ and is applied only in rare instances and under exceptional circumstances.¹⁰ Thus, courts have held that states are subject to estoppel only—

— under compelling circumstances to prevent manifest injustice.¹¹

— in exceptional circumstances where there is a shocking degree of aggravated and overreaching conduct.¹²

— when injustice would result, and public policy would not be substantially adversely affected.¹³

— when the acts of the agency amounted to fraud or a manifest abuse of discretion.¹⁴

— when the public interest will not be unduly damaged and when its application will not substantially and adversely affect the exercise of governmental powers.¹⁵

— where it would be unconscionable to allow the State to revise an earlier position.¹⁶

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Footnotes

- 1 §§ 127 et seq.
- 2 *Button v. Haines Borough*, 208 P.3d 194 (Alaska 2009); *Berrington Corp. v. State Dept. of Revenue*, 277 Neb. 765, 765 N.W.2d 448 (2009) (equitable estoppel); *In re Lyon*, 178 Vt. 232, 2005 VT 63, 882 A.2d 1143 (2005).
- 3 *Holland Group, Inc. v. North Carolina Dept. of Admin., State Const. Office*, 130 N.C. App. 721, 504 S.E.2d 300 (1998); *Wisconsin Dept. of Revenue v. Moebius Printing Co.*, 89 Wis. 2d 610, 279 N.W.2d 213 (1979). Extraordinary circumstances warranting equitable estoppel against a government agency must be truly extraordinary and must go beyond what would be acceptable facts when the target of estoppel is not a government agency. *Board of Trustees, Kentucky Retirement Systems v. Grant*, 257 S.W.3d 591 (Ky. Ct. App. 2008).
- 4 *Town of Poughkeepsie v. Zagata*, 245 A.D.2d 672, 664 N.Y.S.2d 500 (3d Dep't 1997).
- 5 *Tax Appeal of Director of Taxation v. Medical Underwriters of California*, 115 Haw. 180, 166 P.3d 353 (2007).
- 6 *Marriott v. Cole*, 115 Md. App. 493, 694 A.2d 123, 118 Ed. Law Rep. 1065 (1997); *Las Vegas Convention and Visitors Authority v. Miller*, 191 P.3d 1138 (Nev. 2008) (equitable estoppel).
- 7 *Oklahoma Dept. of Securities ex rel. Fought v. Blair*, 2010 OK 16, 231 P.3d 645 (Okla. 2010), as corrected, (Apr. 6, 2010).
- 8 *Awada v. Univ. of Cincinnati*, 83 Ohio Misc. 2d 100, 680 N.E.2d 258, 118 Ed. Law Rep. 1139 (Ct. Cl. 1997) (involving promissory estoppel).
- 9 *Johnson & Johnson v. Taxation and Revenue Dept. of State of N.M.*, 123 N.M. 190, 1997-NMCA-030, 936 P.2d 872 (Ct. App. 1997).
As a general rule, equitable estoppel cannot be invoked against the State. *ABC Disposal Systems, Inc. v. Department Of Natural Resources*, 681 N.W.2d 596 (Iowa 2004).
- 10 *State v. Harris*, 881 So. 2d 1079 (Fla. 2004) (equitable estoppel).
- 11 *Berrington Corp. v. State Dept. of Revenue*, 277 Neb. 765, 765 N.W.2d 448 (2009).
- 12 *Waters-Haskins v. New Mexico Human Services Dept., Income Support Div.*, 2009-NMSC-031, 146 N.M. 391, 210 P.3d 817 (2009).
- 13 *Johnson v. City of Bountiful*, 996 F. Supp. 1100 (D. Utah 1998).
- 14 *Wisconsin Patients Compensation Fund v. St. Mary's Hosp. of Milwaukee*, 209 Wis. 2d 17, 561 N.W.2d 797 (Ct. App. 1997).

- 15 Valencia Energy Co. v. Arizona Dept. of Revenue, 191 Ariz. 565, 959 P.2d 1256 (1998).
16 Wisconsin Dept. of Revenue v. Moebius Printing Co., 89 Wis. 2d 610, 279 N.W.2d 213 (1979).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 136

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

C. The Public; Governmental Entities, Subdivisions, and Agencies

2. States

a. In General

§ 136. Effect of neglect, laches, omissions, or unauthorized acts of officers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  [62.2\(1\)](#), [62.2\(2\)](#), [62.5](#)

A.L.R. Library

[Estoppel of state or local government in tax matters](#), 21 A.L.R.4th 573

[Estoppel of United States, state, or political subdivision by deed or other instrument](#), 23 A.L.R.2d 1419

[Comment Note.—Applicability of doctrine of estoppel against government and its governmental agencies](#), 1 A.L.R.2d 338

Generally, the laches, negligence, or omissions of public officers in discharging or failing to discharge their public duties does not work an estoppel against a State.¹ Moreover, a State cannot ordinarily be estopped by the ultra vires or unauthorized or fraudulent acts, representations, admissions, or conduct of its officers.²

In general, a State is generally not estopped by an agent or official's mistaken or erroneous action, statement, or opinion,³ at least where the error is not shown to be knowing, wrongful, or intentional⁴ but is the result of a simple mistake.⁵ Indeed, particularly in tax matters, courts have refused to permit estoppel despite reliance upon an official or agent's mistaken act, advice, or opinion.⁶

However, when courts permit claims for equitable estoppel based upon mistaken advice, the claim may not be based on casual acts, advice, or instructions issued by nonsupervisory employees,⁷ and some degree of formality is required.⁸ Further, because the traditional elements of estoppel must also be shown,⁹ detrimental reliance on the mistaken advice must still be shown.¹⁰

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Footnotes

- 1 JD Design Group, Inc. v. Graham, 282 Ga. 130, 646 S.E.2d 227 (2007) (negligence of public officers); Smith v. Toman, 368 Ill. 414, 14 N.E.2d 478, 118 A.L.R. 924 (1938); State ex rel. Boynton v. Wheat Farming Co., 137 Kan. 697, 22 P.2d 1093 (1933); Weatherly v. Jackson, 123 Tex. 213, 71 S.W.2d 259 (Comm'n App. 1934).
- 2 Ben Hill County Bd. of Educ. v. Davis, 270 Ga. 452, 510 S.E.2d 826, 132 Ed. Law Rep. 1017 (1999); Fatone v. City of Troy, 236 A.D.2d 676, 653 N.Y.S.2d 195 (3d Dep't 1997); Billups v. Carter, 268 Va. 701, 604 S.E.2d 414 (2004).
- 3 Ouziel v. State, 174 Misc. 2d 900, 667 N.Y.S.2d 872 (Ct. Cl. 1997); Drake v. Medical College of Ohio, 120 Ohio App. 3d 493, 698 N.E.2d 463, 128 Ed. Law Rep. 330 (10th Dist. Franklin County 1997); Greenville County v. Kenwood Enterprises, Inc., 353 S.C. 157, 577 S.E.2d 428 (2003) (overruled on other grounds by, Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005)) (mistaken statements of law).
- 4 Shakopee Mdewakanton Sioux (Dakota) Community v. Minnesota Campaign Finance & Public Disclosure Bd., 586 N.W.2d 406 (Minn. Ct. App. 1998); Billings Post No. 1634 v. Montana Dept. of Revenue, 284 Mont. 84, 943 P.2d 517 (1997).
- 5 HIP of New Jersey, Inc. v. New Jersey Dept. of Banking and Ins., 309 N.J. Super. 538, 707 A.2d 1044 (App. Div. 1998).
- 6 Gillette Co. v. Commissioner of Revenue, 425 Mass. 670, 683 N.E.2d 270 (1997); S & H Marketing Group, Inc. v. Sharp, 951 S.W.2d 265 (Tex. App. Austin 1997).
- 7 Valencia Energy Co. v. Arizona Dept. of Revenue, 191 Ariz. 565, 959 P.2d 1256 (1998).
- 8 Open Primary Elections Now v. Bayless, 193 Ariz. 43, 969 P.2d 649 (1998); C. E. Weaver Stone Co. v. Comptroller of Treasury, 235 Md. 15, 200 A.2d 53 (1964) (court refused to apply estoppel where the state agent gave advice in a causal manner).
A state agency could not deny its self-imposed deadline for final agency decision, which it had formally communicated to claimant. Holland Group, Inc. v. North Carolina Dept. of Admin., State Const. Office, 130 N.C. App. 721, 504 S.E.2d 300 (1998).
- 9 § 129.
- 10 Valencia Energy Co. v. Arizona Dept. of Revenue, 191 Ariz. 565, 959 P.2d 1256 (1998); Lockhart v. Teachers' Retirement System of Oklahoma, 1998 OK CIV APP 42, 958 P.2d 810 (Div. 1 1998).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 137

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

C. The Public; Governmental Entities, Subdivisions, and Agencies


2. States

a. In General

§ 137. In criminal cases

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.2(1), 62.2(2)

The application of estoppel against the State seems particularly inappropriate in areas such as criminal prosecutions as state officials and agencies have no authority to waive a State's penal laws.¹ Thus, courts have held that the State is not estopped from—

—prosecuting a defendant for assault and battery although the State had previously prosecuted the party whom the State now claimed that the defendant had assaulted.²

—enforcing its criminal laws based on a comment made by an assistant district attorney in a private conversation.³

—reincarcerating a defendant to serve the remainder of her sentence after a sheriff had released her from custody to receive necessary medical attention in another county for her premature labor and birth of her child.⁴

—prosecuting a convicted sex offender for a failure to inform authorities of a change in residence in the absence of any official representation to the defendant that he was not required to comply with registration requirements.⁵

—seeking the death penalty after a detective had suggested that the district attorney might not seek the death penalty if the defendant cooperated in the investigation since the detective's comments were not the motivating cause of the defendant's admission.⁶

— using inculpatory statements made by a criminal defendant to a social worker on the promise of confidentiality.⁷

A criminal defendant may not rely on equitable estoppel to challenge a plea agreement.⁸

Authorities differ as to whether an estoppel may operate in favor of the State in a criminal case, as some courts hold that the prosecution in a criminal case cannot invoke the doctrine of estoppel against the accused,⁹ while there is also authority that the prosecution may invoke the doctrine.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Testimony by the managing member of the operator of a horse racing facility that state racing officials told him a race between two horses with the same owner was an official race was sufficient to support ALJ's finding that Division of Pari-Mutuel Wagering should be equitably estopped from prosecuting operator for failing to conduct the number of horse races required by its pari-mutuel wagering permit, even though the statements by the officials were hearsay; statements were made in the course of the officials' employment with the Division of Pari-Mutuel Wagering, which would make the statements admissible in a civil action. [Fla. Stat. Ann. §§ 90.803\(18\)\(d\), 550.002\(25\), 550.01215\(3\); Fla. Admin. Code Ann. r. 61D-2.001\(15\). Hamilton Downs Horsetrack, LLC v. State Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, 226 So. 3d 1046 \(Fla. 1st DCA 2017\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 [State v. Marshall, 6 Conn. Cir. Ct. 520, 276 A.2d 916 \(App. Div. 1970\).](#)
- 2 [State v. Abbott, 36 N.J. 63, 174 A.2d 881 \(1961\).](#)
- 3 [State v. Cherry, 387 S.W.2d 149 \(Tex. Civ. App. Dallas 1965\).](#)
- 4 [State v. Chapman, 977 S.W.2d 122 \(Tenn. Crim. App. 1997\).](#)
- 5 [People v. Fioretti, 54 Cal. App. 4th 1209, 63 Cal. Rptr. 2d 367 \(6th Dist. 1997\).](#)
- 6 [People v. Williams, 16 Cal. 4th 635, 66 Cal. Rptr. 2d 573, 941 P.2d 752 \(1997\).](#)
- 7 [State v. Driscoll, 53 Wis. 2d 699, 193 N.W.2d 851, 50 A.L.R.3d 554 \(1972\).](#)
- 8 [State v. Yates, 161 Wash. 2d 714, 168 P.3d 359 \(2007\).](#)
- 9 [Bailey v. State, 57 Neb. 706, 78 N.W. 284 \(1899\).](#)
- 10 [State v. O'Brien, 94 Tenn. 79, 28 S.W. 311 \(1894\).](#)

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 138

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

C. The Public; Governmental Entities, Subdivisions, and Agencies

2. States

b. State Political Subdivisions

§ 138. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.3, 62.4

A.L.R. Library

[Estoppel of United States, state, or political subdivision by deed or other instrument, 23 A.L.R.2d 1419](#)

In general, courts do not distinguish among state and political subdivisions (such as counties, municipal corporations, and towns) with respect to the availability of estoppel.¹ Thus, although cities are not immune from the doctrine of equitable estoppel,² courts hold that a State and its political subdivisions may be subject to estoppel—

— only under very exceptional circumstances.³

— where the affirmative acts of the public body have created a situation where it would be inequitable and unjust to permit the body to deny what it has done.⁴

— under compelling circumstances, to prevent manifest injustice.⁵

On the other hand, a person seeking to raise an estoppel against a State's political subdivisions bears a heavy burden,⁶ and a State's political subdivisions, like the State itself, are generally not subject to a claim grounded upon the doctrine of equitable estoppel based upon public officials' actions in excess of their authority.⁷

CUMULATIVE SUPPLEMENT

Cases:

The operation of a jail constitutes a government function for purposes of sovereign immunity from claim of equitable estoppel, and furthermore, employment decisions made in the exercise of a government function fall within this protection. R.C. § 2744.01(C). [Porter v. Probst, 2014-Ohio-3789, 18 N.E.3d 824](#) (Ohio Ct. App. 7th Dist. Belmont County 2014).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Scaling v. Williams, 284 S.W. 310 \(Tex. Civ. App. Fort Worth 1926\).](#)
- 2 [Mayor & Bd. of Aldermen, City of Clinton v. Welch, 888 So. 2d 416 \(Miss. 2004\).](#)
- 3 [Sexton v. Sevier County, 948 S.W.2d 747 \(Tenn. Ct. App. 1997\).](#)
- 4 [Stahelin v. Board of Ed., School Dist. No. 4, DuPage County, 87 Ill. App. 2d 28, 230 N.E.2d 465 \(2d Dist. 1967\).](#)
- 5 [Woodard v. City of Lincoln, 256 Neb. 61, 588 N.W.2d 831 \(1999\).](#)
- 6 [State v. Lee, 584 N.W.2d 11 \(Minn. Ct. App. 1998\).](#)
- 7 [Fatone v. City of Troy, 236 A.D.2d 676, 653 N.Y.S.2d 195 \(3d Dep't 1997\).](#)

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 139

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

C. The Public; Governmental Entities, Subdivisions, and Agencies

2. States

b. State Political Subdivisions

§ 139. Counties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.3

A.L.R. Library

[Comment Note.—Applicability of doctrine of estoppel against government and its governmental agencies, 1 A.L.R.2d 338](#)

As an agent or political subdivision of a State, the application of the estoppel doctrines against a county are limited¹ and may be invoked only under very exceptional circumstances.² Indeed, it has been held that a county will not be estopped in matters affecting its governmental or sovereign functions³ unless equity and justice demand it.⁴ Thus, estoppel doctrines may not be applied against a county—

— when to do so would nullify a strong rule of policy, adopted for the benefit of the public.⁵

— in matters relating to public welfare, taxation, or any exercise of the police power when the county acts to protect public rights.⁶

— to prevent the recoupment of an overpayment of public assistance after a county agency's failure to include the recipient's wages when calculating the amount of assistance.⁷

— to stop a county from pursuing a claim against the State for amounts due under a contract for housing state prisoners.⁸

— to prevent a county from revoking an occupational license that had been mistakenly issued in violation of the legislative direction.⁹

As with other governmental units,¹⁰ an estoppel may not be raised against a county based on the unauthorized or ultra vires acts of its agents¹¹ unless, within the limits of its powers, the county officially acquiesces in and approves of the act.¹² However, when authorized, county officers are equitably estopped from denying the validity of contracts that they entered into voluntarily.¹³

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Footnotes

- 1 § 138.
- 2 Sexton v. Sevier County, 948 S.W.2d 747 (Tenn. Ct. App. 1997).
- 3 Scaling v. Williams, 284 S.W. 310 (Tex. Civ. App. Fort Worth 1926).
Matters of public interest and legislative will should not be easily compromised by freely applying the doctrine of estoppel to irregular municipal conduct. *County of Morris v. Fauver*, 153 N.J. 80, 707 A.2d 958 (1998).
- 4 Seward v. Fiskien, 122 Wash. 225, 210 P. 378, 27 A.L.R. 1208 (1922).
A county may be estopped as to governmental powers to prevent loss to another and where such powers will not be impaired thereby. *Washington v. McLawhorn*, 237 N.C. 449, 75 S.E.2d 402 (1953).
- 5 In re Marriage of Walters, 59 Cal. App. 4th 998, 70 Cal. Rptr. 2d 354 (2d Dist. 1997).
- 6 Shriver v. Board of County Com'rs of Sedgwick County, 189 Kan. 548, 370 P.2d 124 (1962); *Sage v. Williams*, 23 Kan. App. 2d 624, 933 P.2d 775 (1997) (with respect to taxation matters).
- 7 Shelton v. Wing, 256 A.D.2d 1143, 684 N.Y.S.2d 726 (4th Dep't 1998).
- 8 County of Morris v. Fauver, 153 N.J. 80, 707 A.2d 958 (1998).
- 9 Ammons v. Okeechobee County, 710 So. 2d 641 (Fla. Dist. Ct. App. 4th Dist. 1998).
- 10 § 127.
- 11 Plymouth Foam Products, Inc. v. City of Becker, Minn., 120 F.3d 153 (8th Cir. 1997); *Agrex, Inc. v. City of Superior*, 7 Neb. App. 237, 581 N.W.2d 428 (1998).
- 12 *Agrex, Inc. v. City of Superior*, 7 Neb. App. 237, 581 N.W.2d 428 (1998).
- 13 Fayette County Bd. of Com'rs v. American Federation of State, County and Mun. Employees, Council 84, 692 A.2d 274 (Pa. Commw. Ct. 1997).
As to estoppel of municipal corporation with regard to contracts, see *Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions* §§ 463 to 469.

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 140

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

C. The Public; Governmental Entities, Subdivisions, and Agencies

2. States

b. State Political Subdivisions

§ 140. Municipal corporations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.4

A.L.R. Library

[Estoppel of state or local government in tax matters, 21 A.L.R.4th 573](#)

[Estoppel of municipality as to encroachments upon public streets, 44 A.L.R.3d 257](#)

[Comment Note.—Applicability of doctrine of estoppel against government and its governmental agencies, 1 A.L.R.2d 338](#)

As with other governmental units generally,¹ the application of estoppel doctrines against municipal corporations is not favored,² is rarely applied,³ and is not available on the same terms as against a private individual.⁴ Thus, the doctrine of estoppel generally is not applied in matters involving or affecting its governmental or public functions⁵ such as the taxing or police power.⁶

Observation:

Precluding a city from performing a specific governmental function in a single instance is not per se interference with its governmental functions. Rather, in determining whether a case presents an appropriate instance in which to apply the exception to estoppel, the relevant inquiry is whether estopping the city in a single instance will bar the future performance of that governmental function or impede the city's ability to perform its other governmental functions.⁷

Nonetheless, a municipal corporation is subject to the rules of estoppel⁸ in those cases where equity and justice require their application.⁹ Thus, the doctrine of estoppel may be applied against municipal corporations—

— to prevent injustice where the estoppel does not interfere with such powers.¹⁰

— if there would otherwise be a manifest injustice as a result of the municipality's misleading nonfeasance.¹¹

— where the interests of justice, morality, and common fairness clearly dictate that course.¹²

The doctrine of estoppel may be applied in a proper case when justice and fair play demand it and where there has been a misrepresentation or concealment of material fact.¹³ For the doctrine of municipal estoppel to apply, a party's reliance upon the misrepresentation must be reasonable.¹⁴

The rule that equitable estoppel is applicable against a city only under exceptional circumstances does not supplant any of the four elements required for equitable estoppel.¹⁵

A city may be estopped from asserting its rights in an unused public street under the doctrine of equitable estoppel.¹⁶

While it has been said that a municipality cannot be estopped from asserting a violation of its ordinances and seeking to enforce its ordinances,¹⁷ it has also been held that a city may be estopped from enforcing an ordinance if doing so will not frustrate the purpose for which the ordinance was enacted or bar the city from enforcing the ordinance in the future.¹⁸

Observation:

In conducting an inquiry into whether estopping a city in a single instance will bar the future performance of that governmental function or impede the city's ability to perform its other governmental functions, the court should first determine what municipal governmental functions, if any, would be affected by estopping the city.¹⁹

CUMULATIVE SUPPLEMENT

Cases:

Organization sufficiently stated that municipality made clear and definite promise to permit it to erect and maintain display in park for up to one year, as required for promissory-estoppel claim under Minnesota law, where organization alleged that resolution was in effect at that time which allowed park to be used limited public forum and municipality issued permit to it pursuant to that resolution. [Satanic Temple v. City of Belle Plaine, Minnesota, 475 F. Supp. 3d 950 \(D. Minn. 2020\)](#).

City was not estopped from denying police union retirees medical benefits at full health plan rate, as city never made any clear promise of such benefits. [Vallejo Police Officers Association v. City of Vallejo, 15 Cal. App. 5th 601, 223 Cal. Rptr. 3d 280 \(1st Dist. 2017\)](#), review filed, Oct. 2, 2017 and (Oct. 24, 2017).

Alleged statements by mayor, city, and community development commission (CDC) that property where furniture manufacturing business was located would be acquired by city for retail development project did not establish a representation or concealment of material facts with knowledge of the actual facts, and thus did not establish equitable estoppel, absent evidence that mayor, city, or CDC knew that the property would not be acquired when they made these representations. [Joffe v. City of Huntington Park, 201 Cal. App. 4th 492, 2011 WL 6005309 \(2d Dist. 2011\)](#), as modified, (Dec. 2, 2011).

Doctrine of "quasi-estoppel" did not preclude city from asserting notice provision of Idaho Tort Claims Act (ITCA) as a defense in property owner's action alleging that city's enforcement of ordinance that had been found to be unconstitutional in a separate proceeding effectuated an unlawful taking of property in violation of federal and state constitutions, where any refund or return of property similar to remedies received from city by others that had been impacted by ordinance would have been impossible since the city received no money or land from property owner. West's I.C.A. § 6–908. [Alpine Village Co. v. City of McCall, 303 P.3d 617 \(Idaho 2013\)](#).

For a municipality to be estopped, there must have occurred an affirmative act on the part of the municipality which induced substantial reliance thereon by the litigant, and such act must be the act of the municipality itself, such as legislation by a city council, rather than merely the unauthorized act of a ministerial officer or a ministerial representation; if under all of the circumstances, the affirmative acts of the public body have created a situation where it would be inequitable and unjust to permit it to deny what it has done or permitted to be done, the doctrine of estoppel may be applied against it. [Matthews v. Chicago Transit Authority, 2014 IL App \(1st\) 123348, 381 Ill. Dec. 44, 9 N.E.3d 1163 \(App. Ct. 1st Dist. 2014\)](#).

The assertions of city officials are not an affirmative act of a public body itself, as could support an equitable estoppel claim against the city. [Morgan Place of Chicago v. City of Chicago, 2012 IL App \(1st\) 091240, 363 Ill. Dec. 385, 975 N.E.2d 187 \(App. Ct. 1st Dist. 2012\)](#).

Payments of health insurance premiums made by town officials, when the town council had not promised to make such payments, did not create a promise for purposes of town employees' promissory estoppel claim, where the officials were not authorized to make such a promise on behalf of the town. [Budge v. Town of Millinocket, 2012 ME 122, 55 A.3d 484 \(Me. 2012\)](#).

Municipal corporations are not exempt from application of equitable estoppel principles; however, in practice courts have applied the doctrine more narrowly. [Baltimore County, Maryland v. Aecom Services, Inc., 200 Md. App. 380, 28 A.3d 11 \(2011\)](#).

Alleged promise of city to raise sewer rates could not reasonably be relied upon or enforced in promissory estoppel action by contractor seeking to design and operate sewage treatment system; even though individual city representatives allegedly promised to raise sewer rates so contractor could obtain financing, alleged promise was not on city's minutes. [Groundworx, LLC v. Blanton, 234 So. 3d 363 \(Miss. 2017\)](#).

Showing of fraud, misrepresentation, deception, or similar affirmative misconduct, along with reasonable reliance thereon is necessary to apply the doctrine of equitable estoppel against a municipality. [Town of Copake v. 13 Lackawanna Properties, LLC](#), 99 A.D.3d 1061, 952 N.Y.S.2d 780 (3d Dep't 2012).

City's procurement of road salt was a governmental function, and thus landscaping supplies company's claim for promissory estoppel was precluded under common law rule that the doctrines of equitable estoppel and promissory estoppel were inapplicable against political subdivision when the political subdivision was engaged in a governmental function after city stated it did not want road salt it originally agreed to purchase, where removal of snow and ice from public roads was not a governmental function. [Ohio Rev. Code Ann. § 2744.01\(C\)\(1\)](#). [Nordonia Landscape Supplies, LLC v. City of Akron](#), 2020-Ohio-2809, 154 N.E.3d 535 (Ohio Ct. App. 9th Dist. Summit County 2020), appeal not allowed, 159 Ohio St. 3d 1489, 2020-Ohio-4232, 151 N.E.3d 649 (2020).

Town's zoning administrator, who erroneously made oral assurances to landowner that no permit for landowner's construction of a pergola was necessary, was put on notice of the relevant facts surrounding the pergola, as required as an element of the analysis of whether equitable estoppel precluded town's enforcement action in regards to the pergola, where landowner showed zoning administrator a sketch of the proposed pergola, although the sketch lacked certain details necessary to determine every way in which the proposed structure triggered the need for a zoning permit. [In re Langlois/Novicki Variance Denial](#), 2017 VT 76, 175 A.3d 1222 (Vt. 2017).

Application of estoppel to preclude village from charging a fee to property developer for reserved water and sewer allocations would not offend public policy upon property developer's claim that village formally acknowledged the allocations in a meeting of the trustees, and then reaffirmed its recognition of the allocations through its conduct for more than a decade, resulting in developer reasonably relying on the village's representations to its detriment. [Vermont North Properties v. Village of Derby Center](#), 2014 VT 73, 102 A.3d 1084 (Vt. 2014).

[END OF SUPPLEMENT]

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Footnotes

- 1 § 127.
- 2 [Hounsell v. North Conway Water Precinct](#), 154 N.H. 1, 903 A.2d 987 (2006).
- 3 [Peterson v. City of Abbeville](#), 1 So. 3d 38 (Ala. 2008).
Estopping a municipality from enforcing the law must be, at best, the rare exception, not the rule. [Levelle, Inc. v. District of Columbia Alcoholic Beverage Control Bd.](#), 924 A.2d 1030 (D.C. 2007).
- 4 [Cherry Creek Aviation, Inc. v. City of Steamboat Springs](#), 958 P.2d 515 (Colo. App. 1998); [City of Billings v. Pierce Packing Co.](#), 117 Mont. 255, 161 P.2d 636 (1945); [Updegraff v. City of Norman](#), 1955 OK 195, 287 P.2d 909 (Okla. 1955).
- 5 [Alexander v. Randall](#), 257 Iowa 422, 133 N.W.2d 124 (1965); [King v. City of Newburgh](#), 84 A.D.2d 388, 446 N.Y.S.2d 329 (2d Dep't 1982).
Even if doing justice would otherwise warrant applying principles of estoppel, courts will not apply the doctrine if doing so interferes with a city's ability to perform its governmental functions. [City of San Antonio v. TPLP Office Park Properties](#), 218 S.W.3d 60 (Tex. 2007).
- 6 [Ackley v. Kenyon](#), 152 Conn. 392, 207 A.2d 265 (1965); [Christensen v. City of Pocatello](#), 142 Idaho 132, 124 P.3d 1008 (2005) (police power); [Cawley v. Board of Trustees of Firemen's Pension or Relief Fund of City of Beckley](#), 138 W. Va. 571, 76 S.E.2d 683 (1953).
A city should not be estopped if doing so would hinder its ability to ensure public safety. [City of White Settlement v. Super Wash, Inc.](#), 198 S.W.3d 770 (Tex. 2006).
- 7 [City of White Settlement v. Super Wash, Inc.](#), 198 S.W.3d 770 (Tex. 2006).

- 8 Johnson v. Hospital Service Plan of N. J., 25 N.J. 134, 135 A.2d 483 (1957); Fallica v. Town of Brookhaven, 69 A.D.2d 579, 419 N.Y.S.2d 102 (2d Dep't 1979), order modified on other grounds, 52 N.Y.2d 794, 436 N.Y.S.2d 707, 417 N.E.2d 1248 (1980); Strahan v. City of Aurora, 38 Ohio Misc. 37, 67 Ohio Op. 2d 215, 311 N.E.2d 876 (C.P. 1973).
- As to estoppel of municipal corporation with regard to contracts, see Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 463 to 469.
- 9 Town of Essex v. New England Telegraph Co. of Massachusetts, 239 U.S. 313, 36 S. Ct. 102, 60 L. Ed. 301 (1915); Woodard v. City of Lincoln, 256 Neb. 61, 588 N.W.2d 831 (1999); Wood v. Borough of Wildwood Crest, 319 N.J. Super. 650, 726 A.2d 310 (App. Div. 1999).
- 10 O. P. Corp. v. Village of North Palm Beach, 278 So. 2d 593 (Fla. 1973).
- 11 1555 Boston Road Corp. v. Finance Administrator of the City of New York, 61 A.D.2d 187, 401 N.Y.S.2d 536 (2d Dep't 1978).
- 12 Ranchlands, Inc. v. Township of Stafford, 305 N.J. Super. 528, 702 A.2d 1325 (App. Div. 1997), judgment aff'd, 156 N.J. 443, 720 A.2d 339 (1998).
- 13 Peterson v. City of Abbeville, 1 So. 3d 38 (Ala. 2008).
- 14 Sutton v. Town of Gilford, 160 N.H. 43, 992 A.2d 709 (2010).
- 15 City of Akron v. Akron Westfield Community School Dist., 659 N.W.2d 223 (Iowa 2003).
- 16 City of Marquette v. Gaede, 672 N.W.2d 829 (Iowa 2003).
- 17 Village of Hobart v. Brown County, 2005 WI 78, 281 Wis. 2d 628, 698 N.W.2d 83 (2005).
- 18 City of White Settlement v. Super Wash, Inc., 198 S.W.3d 770 (Tex. 2006).
- 19 City of White Settlement v. Super Wash, Inc., 198 S.W.3d 770 (Tex. 2006).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 141

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

C. The Public; Governmental Entities, Subdivisions, and Agencies

2. States

b. State Political Subdivisions

§ 141. Municipal corporations—Ultra vires acts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.4, 62.5

A municipality may be estopped from denying that its acts induced another's detrimental reliance but not when the municipality's acts were clearly ultra vires.¹ Thus, the doctrine of estoppel cannot be applied to extend the power of a municipality beyond that granted by the legislature.²

Observation:

Courts distinguish between an act utterly beyond the jurisdiction of a municipal corporation (which is ultra vires in the primary sense and void) and the irregular exercise of a basic power under legislative grant in matters that are not in themselves jurisdictional (which is ultra vires only in the secondary sense that does not preclude ratification or the application of the doctrine of estoppel in the interest of equity and essential justice).³

Also, a municipality is not estopped by an action or representation of an agent that is beyond the agent's authority⁴ unless, within the limitation of its legal powers, the municipality officially acquiesces in, and approves of, the agent's unauthorized act or representation.⁵

Where a municipality contracts with a total absence of power, it is not estopped from denying the resulting agreement's validity.⁶ In fact, a municipality is not estopped to aver its incapacity to make a contract because it received benefits under it.⁷ Further, the fact that the other party to the contract has fully performed its part of the agreement, or has expended money in reliance of its validity, does not estop a city from asserting ultra vires.⁸

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Footnotes

- 1 [Hamwi v. Zollar](#), 299 Ill. App. 3d 1088, 234 Ill. Dec. 253, 702 N.E.2d 593 (1st Dist. 1998); [Technology Investors v. Town of Westerly](#), 689 A.2d 1060 (R.I. 1997).
A city may not be estopped to deny the invalidity of a contract that is ultra vires in the sense that it is not within the power of the municipality to make. [Genesis Health Club, Inc. v. City of Wichita](#), 285 Kan. 1021, 181 P.3d 549 (2008).
- 2 [City of Miami Beach v. E. J. Smith Co.](#), 90 So. 2d 312 (Fla. 1956).
- 3 [Wood v. Borough of Wildwood Crest](#), 319 N.J. Super. 650, 726 A.2d 310 (App. Div. 1999).
- 4 [Agrex, Inc. v. City of Superior](#), 7 Neb. App. 237, 581 N.W.2d 428 (1998); [Cardinal Development Corp. v. Town of Winchester Zoning Bd. of Adjustment](#), 157 N.H. 710, 958 A.2d 996 (2008); [Village of Hobart v. Brown County](#), 2005 WI 78, 281 Wis. 2d 628, 698 N.W.2d 83 (2005).
As to estoppel of government generally and ultra vires acts, see § 127.
- 5 [Agrex, Inc. v. City of Superior](#), 7 Neb. App. 237, 581 N.W.2d 428 (1998).
- 6 [H.G. Brown Family Ltd. Partnership v. City of Villa Rica](#), 278 Ga. 819, 607 S.E.2d 883 (2005).
A city may not be estopped to deny the invalidity of a contract that is ultra vires in the sense that it is not within the power of the municipality to make. [Genesis Health Club, Inc. v. City of Wichita](#), 285 Kan. 1021, 181 P.3d 549 (2008).
- 7 [Genesis Health Club, Inc. v. City of Wichita](#), 285 Kan. 1021, 181 P.3d 549 (2008).
- 8 [Genesis Health Club, Inc. v. City of Wichita](#), 285 Kan. 1021, 181 P.3d 549 (2008).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 142

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel


C. The Public; Governmental Entities, Subdivisions, and Agencies

3. United States

§ 142. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.2(3), 62.2(4)

A.L.R. Library

[Taxpayer's Assertion of Equitable Estoppel Against IRS Based on Actions of Agency, 170 A.L.R. Fed. 447](#)

The doctrine of estoppel is rarely applicable against the federal government¹ and is only invoked in the most serious circumstances.² Thus, as a general rule, equitable estoppel against the federal government is strongly disfavored, if not outright disallowed,³ and the federal government may not be estopped on the same terms as any other litigant.⁴

Even where the claim is recognized, a litigant asserting an estoppel against the federal government carries a heavy burden.⁵ Indeed, in 1990, the United States Supreme Court observed that it has never upheld an estoppel claim against the United States although the court has refused to adopt an absolute prohibition on estoppel claims against the federal government under all circumstances.⁶ Lower federal courts have accepted estoppel claims against the federal government under a variety of rationales and analyses.⁷ On the other hand, federal circuit courts have also repeatedly acknowledged the importance of separation of powers principles to claims of estoppel against the government.⁸

The United States may not be subject to estoppel as to matters that would establish jurisdiction in a suit to which the government has not consented.⁹

CUMULATIVE SUPPLEMENT

Cases:

Because the government may not be estopped on the same terms as other litigants, a party attempting to estop the government bears a very heavy burden in sustaining its argument, and at a minimum, the party must demonstrate some affirmative misconduct by the government, which is more than mere negligence and requires an intentional act that either intentionally or recklessly misleads the claimant. [Fitzgerald Truck Parts and Sales, LLC v. United States](#), 391 F. Supp. 3d 794, 104 Fed. R. Serv. 3d 186 (M.D. Tenn. 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Frillz, Inc. v. Lader](#), 104 F.3d 515 (1st Cir. 1997); [Linkous v. U.S.](#), 142 F.3d 271, 166 A.L.R. Fed. 733 (5th Cir. 1998).
- 2 [Grace v. U.S.](#), 754 F. Supp. 2d 585 (W.D. N.Y. 2010).
- 3 [Volvo Trucks of North America, Inc. v. U.S.](#), 367 F.3d 204 (4th Cir. 2004).
There is an extremely high bar to claims of equitable estoppel against the federal government since when the government is unable to enforce the law because the conduct of its agents has given rise to an estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined. [Singer v. Department of Health and Human Services](#), 641 F. Supp. 2d 1219 (D. Utah 2009).
- 4 [Premo v. U.S.](#), 599 F.3d 540 (6th Cir. 2010).
- 5 [Green v. U.S.](#), 8 F. Supp. 2d 983 (W.D. Mich. 1998).
- 6 [Office of Personnel Management v. Richmond](#), 496 U.S. 414, 110 S. Ct. 2465, 110 L. Ed. 2d 387 (1990).
The Supreme Court's holding in *Richmond* casts further doubt on the proposition that equitable estoppel runs against the United States. [U.S. v. Marine Shale Processors](#), 81 F.3d 1329 (5th Cir. 1996).
- 7 [Office of Personnel Management v. Richmond](#), 496 U.S. 414, 110 S. Ct. 2465, 110 L. Ed. 2d 387 (1990).
- 8 [U.S. v. Marine Shale Processors](#), 81 F.3d 1329 (5th Cir. 1996).
- 9 [Peacock v. U.S.](#), 597 F.3d 654 (5th Cir. 2010).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 143

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel


C. The Public; Governmental Entities, Subdivisions, and Agencies

3. United States

§ 143. Sovereign or proprietary capacity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.2(3), 62.2(4)

A.L.R. Library

[Modern status of applicability of doctrine of estoppel against federal government and its agencies, 27 A.L.R. Fed. 702 \(sec. 16 superseded in part by \[Applicability and effect of equitable estoppel doctrine in immigration and naturalization proceedings, 95 A.L.R. Fed. 262\]\(#\)\)](#)

Some courts have held that the doctrine of estoppel is not available to bind the federal sovereign¹ and that an estoppel may only arise from transactions entered into in the federal government's proprietary capacity.² Other courts have, under certain circumstances, applied estoppel doctrines against the United States without regard to its "capacity," whether proprietary or sovereign,³ although courts have held that the burden of establishing an estoppel against the federal government is heavier when the government acts in a sovereign rather than a proprietary capacity.⁴ Thus, the more general rule among federal circuit courts appears to be that estoppel may be raised against the federal government only where affirmative misconduct is shown⁵ in addition to the traditional elements of estoppel.⁶

Definition:

"Affirmative misconduct" by a government agent, such as may estop the federal government, must be more than mere negligence as the agent must engage in an act that either intentionally or recklessly misleads the claimant.⁷ The government's failure to discharge an affirmative obligation is not the same as engaging in affirmative misconduct, of the kind required for the government to be equitably estopped, as omissions amount only to ordinary negligence.⁸

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Footnotes

- 1 [U.S. v. Ellis, 527 F.3d 203 \(1st Cir. 2008\).](#)
- 2 [Air-Sea Brokers, Inc. v. U. S., 596 F.2d 1008 \(C.C.P.A. 1979\).](#)
Under the proprietary-function exception to the rule that estoppel does not operate against federal government, those government activities undertaken primarily for the commercial benefit of the government are subject to estoppel. [REW Enterprises, Inc. v. Premier Bank, N.A., 49 F.3d 163 \(5th Cir. 1995\).](#)
- 3 [Morris v. Andrus, 593 F.2d 851 \(9th Cir. 1978\).](#)
- 4 [Green v. U.S., 8 F. Supp. 2d 983 \(W.D. Mich. 1998\).](#)
- 5 [Frillz, Inc. v. Lader, 104 F.3d 515 \(1st Cir. 1997\); Drozd v. I.N.S., 155 F.3d 81 \(2d Cir. 1998\); Linkous v. U.S., 142 F.3d 271, 166 A.L.R. Fed. 733 \(5th Cir. 1998\); Premo v. U.S., 599 F.3d 540 \(6th Cir. 2010\); Clason v. Johanns, 438 F.3d 868 \(8th Cir. 2006\); Singer v. Department of Health and Human Services, 641 F. Supp. 2d 1219 \(D. Utah 2009\); Kaeper Machine, Inc. v. U.S., 74 Fed. Cl. 1 \(2006\).](#)
- 6 [Premo v. U.S., 599 F.3d 540 \(6th Cir. 2010\).](#)
- 7 [Estate of James v. U.S. Dept. of Agriculture, 404 F.3d 989, 2005 FED App. 0184P \(6th Cir. 2005\).](#)
- 8 [Samuel C. Johnson 1988 Trust v. Bayfield County, Wis., 634 F. Supp. 2d 956 \(W.D. Wis. 2009\).](#)

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 144

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel


C. The Public; Governmental Entities, Subdivisions, and Agencies

3. United States

§ 144. When estoppel is available

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.2(3), 62.2(4)

A party seeking to estop the federal government must show that the potential injustice to the party outweighs the possibility of damage to the public interest and must also establish the traditional elements for estoppel.¹ Thus, estoppel against the government is not available—

— where it would interfere with underlying government policies or unduly undermine correct enforcement of a particular law or regulation, and it may not be used to contradict a clear congressional mandate.²

— where it would frustrate the purpose of the laws expressing the will of Congress.³

— based upon the erroneous advice by a government agent where the party asserting the estoppel claims entitlement to payments from the federal treasury to which he or she is not otherwise entitled by law.⁴

In no case will the United States be held to be estopped if a strict construction of the legislative enactment in question will avoid it.⁵ Further, Congress may not be estopped by its silence from exercising its constitutional power of legislation.⁶

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Footnotes

- 1 [Salgado-Diaz v. Gonzales, 395 F.3d 1158 \(9th Cir. 2005\)](#), as amended, (Mar. 10, 2005) and opinion amended
on reconsideration, 2005 WL 553046 (9th Cir. 2005).
- 2 [U.S. v. Intercon Leasing, Inc., 617 F. Supp. 323 \(S.D. Fla. 1985\)](#).
- 3 [F.D.I.C. v. Hulsey, 22 F.3d 1472, 23 U.C.C. Rep. Serv. 2d 596 \(10th Cir. 1994\)](#).
- 4 [Perez v. U.S., 156 F.3d 1366 \(Fed. Cir. 1998\)](#).
- 5 [Sanitary Dist. of Chicago v. U.S., 266 U.S. 405, 45 S. Ct. 176, 69 L. Ed. 352 \(1925\)](#).
- 6 [U.S. v. Chemical Foundation, 5 F.2d 191 \(C.C.A. 3d Cir. 1925\)](#).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 145

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel

C. The Public; Governmental Entities, Subdivisions, and Agencies

3. United States

§ 145. Ultra vires acts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  [62.2\(3\)](#), [62.2\(4\)](#), [62.5](#)

A.L.R. Library

[Taxpayer's Assertion of Equitable Estoppel Against IRS Based on Representations of IRS or Non-IRS Employees](#), 176 A.L.R. Fed. 33

As with governmental bodies generally,¹ the federal government is not bound by the unauthorized or ultra vires acts of its officers.² Thus, it is almost universally held that estoppel may not apply to bind the federal government to an unauthorized contract,³ nor may the doctrine of estoppel be used to expand the authority of governmental officials beyond that authorized by law.⁴

Observation:

Those who deal with the federal government are expected to know the law and may not rely on the conduct of government agents contrary to the law.⁵ As a result, reliance on misinformation provided by a federal government employee generally does not provide a basis for estoppel.⁶

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Footnotes

- 1 § 127.
- 2 [Wilber Nat. Bank of Oneonta, N.Y., v. U.S.](#), 294 U.S. 120, 55 S. Ct. 362, 79 L. Ed. 798 (1935); [U.S. v. State of Wash.](#), 233 F.2d 811 (9th Cir. 1956); [Sanders v. C.I.R.](#), 225 F.2d 629 (10th Cir. 1955); [S.J. Amoroso Const. Co., Inc. v. U.S.](#), 12 F.3d 1072 (Fed. Cir. 1993).
While it is a general rule that the United States is neither bound nor estopped by acts of its officers or agents entering into an arrangement or agreement to do what the law does not sanction or permit, the estoppel bar does not apply where the law does sanction or permit the agreement entered into by the agent. [Near v. Department of Energy](#), 259 F. Supp. 2d 1055 (E.D. Cal. 2003).
- 3 [Hachikian v. F.D.I.C.](#), 96 F.3d 502 (1st Cir. 1996) (abrogated on other grounds by, [Hardemon v. City of Boston](#), 1998 WL 148382 (1st Cir. 1998)).
- 4 [U.S. v. Paez](#), 866 F. Supp. 62 (D.P.R. 1994).
- 5 [U.S. v. Huebner](#), 752 F.2d 1235 (7th Cir. 1985); [Decker v. U.S.](#), 603 F. Supp. 40 (S.D. Ohio 1984).
One who relies upon a legal interpretation by a government official assumes the risk that it is in error. [Airmotive Engineering Corp. v. U. S.](#), 210 Ct. Cl. 7, 535 F.2d 8 (1976).
- 6 § 144.

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 146

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

IV. Persons Subject to, or Affected by, Estoppel


C. The Public; Governmental Entities, Subdivisions, and Agencies

3. United States

§ 146. Particular claims

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.2(3), 62.2(4)

The same estoppel requirements that apply to the United States also apply to a qui tam plaintiff advancing a claim under the False Claims Act¹ in the name of the United States.² In matters relating to public lands, it has been held that the federal government is not estopped by the acts of its officers or agents.³

While the federal government cannot be estopped by the representations of a federal employee to refuse to make a disbursement that violates a federal statute, it can be estopped to plead defenses in lawsuits.⁴

CUMULATIVE SUPPLEMENT

Cases:

There was no evidence that representative for private organization making donation to building renovation project had authority to obligate government to future contract amendment or equitable adjustment, that government ratified or adopted any representation that future contract amendment or equitable adjustment would occur, or that government engaged in affirmative misconduct, as required for contractor seeking to recover increased costs incurred in performing contract to establish equitable estoppel claim against government. [P & K Contracting, Inc. v. United States](#), 108 Fed. Cl. 380 (2012).

[END OF SUPPLEMENT]

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Footnotes

- 1 31 U.S.C.A. § 3730.
- 2 U.S. ex rel. Durcholz v. FKW Inc., 997 F. Supp. 1143 (S.D. Ind. 1998).
- 3 Am. Jur. 2d, Public Lands § 113.
- 4 Carter v. U.S., 333 F.3d 791 (7th Cir. 2003).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver One V A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel


V. Practice and Procedure

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  107, 109.1

Primary Authority

[Fed. R. Civ. P. 8\(c\)](#)

A.L.R. Library

A.L.R. Index, Estoppel and Waiver

West's A.L.R. Digest, [Estoppel](#)  107, 109.1

Treatises and Practice Aids

[Haig, Business and Commercial Litigation in Federal Courts](#) §§ 7:61 to 7:64 (2d ed.)

[Wright and Miller's Federal Practice and Procedure](#), Civil § 1270

[Federal Procedure, L. Ed. §§ 62:79, 62:80, 62:83](#)

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28 Am. Jur. 2d Estoppel and Waiver § 147

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure

A. In General

§ 147. Generally; jurisdiction in both courts of law and of equity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  107, 109.1

A.L.R. Library

[Comment Note.—Promissory estoppel, 48 A.L.R.2d 1069](#)

Treatises and Practice Aids

Wright and Miller's [Federal Practice and Procedure, Civil § 1270](#)

Although originally only available in the courts of equity,¹ in modern times, estoppel generally may be raised in a court of law as well² so long as any special pleading requirements are met.³

Practice Tip:

In jurisdictions in which legal and equitable remedies are not blended, equitable estoppel may be unavailable in a court of law.⁴

Such estoppel may be appropriate when a party wrongfully obtains and relies upon a technical advantage to defeat the ends of justice or to establish a dishonest claim.⁵

Observation:

In jurisdictions permitting the assertion of estoppel in either law or equity, some additional equitable ground may be required to justify the resort to a court of equity.⁶

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Footnotes

- 1 [Southern Ry., Carolina Division v. Howell](#), 89 S.C. 391, 71 S.E. 972 (1911).
- 2 [Wolfe v. Wallingford Bank & Trust Co.](#), 124 Conn. 507, 1 A.2d 146, 117 A.L.R. 932 (1938); [In re Thomson's Estate](#), 362 Mo. 1043, 246 S.W.2d 791, 29 A.L.R.2d 1239 (1952).
Estoppel in pais is available as a defense to an action at law. [Wehrman v. Conklin](#), 155 U.S. 314, 15 S. Ct. 129, 39 L. Ed. 167 (1894); [Dickerson v. Colgrove](#), 100 U.S. 578, 25 L. Ed. 618, 1879 WL 16577 (1879).
As to estoppel as an affirmative defense, see § 148.
- 3 [Mercantile Finance Corporation of Alabama v. Scruggs](#), 227 Ala. 585, 151 So. 353 (1933).
As to pleading estoppel, see §§ 149 to 161.
- 4 [Smith v. Mundy](#), 18 Ala. 182, 1850 WL 362 (1850); [Mills v. Graves](#), 38 Ill. 455, 1865 WL 2934 (1865); [Johnson v. Hogan](#), 158 Mich. 635, 123 N.W. 891 (1909).
- 5 [Union Mut. Ins. Co. v. Wilkinson](#), 80 U.S. 222, 20 L. Ed. 617, 1871 WL 14841 (1871).
- 6 [Wehrman v. Conklin](#), 155 U.S. 314, 15 S. Ct. 129, 39 L. Ed. 167 (1894); [Drexel v. Berney](#), 122 U.S. 241, 7 S. Ct. 1200, 30 L. Ed. 1219 (1887); [Cornwall v. Davis](#), 38 F. 878 (C.C.S.D. N.Y. 1889).

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28 Am. Jur. 2d Estoppel and Waiver § 148

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure

A. In General

§ 148. Nature of defense

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  [107](#), [109.1](#)

Treatises and Practice Aids

[Haig, Business and Commercial Litigation in Federal Courts §§ 7:61 to 7:64 \(2d ed.\)](#)

[Wright and Miller's Federal Practice and Procedure, Civil § 1270](#)

[Federal Procedure, L. Ed. §§ 62:79, 62:80, 62:83](#)

Estoppel generally is an affirmative defense¹ that must be pleaded and proved before relief may be granted.²

Practice Tip:

Estoppel is enumerated as an affirmative defense in the Federal Rules of Civil Procedure.³

CUMULATIVE SUPPLEMENT

Cases:

Judicial estoppel was affirmative defense to suit for medical malpractice, and thus, on motion to dismiss medical malpractice complaint against treating physicians and hospitals based on defendants' assertion that patient was judicially estopped from pursuing action for failure to include claim in schedule of assets in patient's chapter 7 case, trial court was required to assume truth of patient's allegations and construe all reasonable inferences in light most favorable to her as nonmoving party. [Alward v. Johnston](#), 199 A.3d 1190 (N.H. 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Rimes Tractor & Equipment, Inc. v. Agricredit Acceptance Corp.](#), 216 Ga. App. 249, 454 S.E.2d 564 (1995); [Countryside Co-op. v. Harry A. Koch Co.](#), 280 Neb. 795, 790 N.W.2d 873 (2010) (equitable estoppel); [Christensen v. Christensen](#), 2003 SD 137, 672 N.W.2d 466 (S.D. 2003).
Judicial estoppel is an affirmative defense. [Middleton v. Caterpillar Indus., Inc.](#), 979 So. 2d 53 (Ala. 2007).
- 2 As to pleading estoppel, see §§ 149 to 161.
As to the burden and standard of proof, see §§ 166 to 172.
- 3 [Fed. R. Civ. P. 8\(c\)](#).

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28 Am. Jur. 2d Estoppel and Waiver One V B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure

B. Pleading

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  4 to 6, 11, 34, 51, 107 to 115

A.L.R. Library

A.L.R. Index, Estoppel and Waiver

A.L.R. Index, Pleadings

West's A.L.R. Digest, [Estoppel](#)  4 to 6, 11, 34, 51, 107 to 115

Treatises and Practice Aids

Wright and Miller's [Federal Practice and Procedure](#), Civil §§ 1270, 1278

[Federal Procedure](#), L. Ed. §§ 62:87 to 62:91, 62:94, 62:296

Trial Strategy

[Tactics and Strategy of Pleading, 3 Am. Jur. Trials 681](#)

Forms

[Am. Jur. Pleading and Practice Forms, Estoppel and Waiver §§ 6 to 19, 25 to 27, 31, 32, 34 to 37](#)

[Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure § 91](#)

[Federal Procedural Forms § 1:167](#)

[West's Federal Forms §§ 2067, 2068 \(5th ed.\)](#)

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28 Am. Jur. 2d Estoppel and Waiver § 149

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure

B. Pleading

1. In General; Necessity of Pleading Defense

§ 149. Generally; necessity of pleading affirmatively

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  4 to 6, 11, 34, 51, 107 to 115

Treatises and Practice Aids

Wright and Miller's [Federal Practice and Procedure](#), Civil § 1270

[Federal Procedure](#), L. Ed. §§ 62:87 to 62:91

Trial Strategy

[Tactics and Strategy of Pleading](#), 3 Am. Jur. Trials 681

Forms

[Am. Jur. Pleading and Practice Forms, Estoppel and Waiver § 6](#) (Checklist—Drafting an answer raising the defense of equitable estoppel)

Am. Jur. Pleading and Practice Forms, Estoppel and Waiver §§ 7 to 17, 31, 32, 34 to 37 (Asserting estoppel—General forms)
Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure § 91 (Answer—Affirmative Defense—Estoppel)
West's Federal Forms §§ 2067, 2068 (5th ed.) (Defenses—Estoppel)

Whether at law or in equity,¹ the affirmative defense of estoppel generally cannot be proved under a general denial² or an objection to the evidence³ but must be pleaded affirmatively⁴ or the defense is waived.⁵

Practice Tip:

In some jurisdictions, an estoppel in pais must be pleaded in equity but need not be pleaded at law.⁶

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Footnotes

- ¹ § 148.
- ² *Star Leasing Corp. v. Elliott*, 194 Kan. 206, 398 P.2d 566 (1965).
As to general denials, see *Am. Jur. 2d, Pleading* § 349.
As to the need for special pleading, see §§ 152 to 154.
- ³ *Anaconda Aluminum Co. v. Sharp*, 243 Miss. 9, 136 So. 2d 585, 99 A.L.R.2d 1307 (1962).
- ⁴ *Rimes Tractor & Equipment, Inc. v. Agricredit Acceptance Corp.*, 216 Ga. App. 249, 454 S.E.2d 564 (1995); *Wareham v. American Family Life Ins. Co.*, 922 S.W.2d 97 (Mo. Ct. App. W.D. 1996); *Lutes v. Lutes*, 2005 MT 242, 328 Mont. 490, 121 P.3d 561 (2005).
A defendant relying upon estoppel must set up the defense in his or her answer, and although the defendant need not use the term "estoppel," the answer must at least set forth the circumstances giving rise to the purported estoppel. *Mission Housing Development Co. v. City and County of San Francisco*, 59 Cal. App. 4th 55, 69 Cal. Rptr. 2d 185 (1st Dist. 1997), as modified on denial of reh'g, (Dec. 12, 1997).
- ⁵ *Lutes v. Lutes*, 2005 MT 242, 328 Mont. 490, 121 P.3d 561 (2005); *In re S.A.P.*, 156 S.W.3d 574 (Tex. 2005).
As to the effect of failure to plead estoppel, see § 151.
- ⁶ *Goldberg v. Cities Service Oil Co.*, 275 Mich. 199, 266 N.W. 321 (1936); *Denny v. Wilson County*, 198 Tenn. 677, 281 S.W.2d 671 (1955).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 150

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure

B. Pleading

1. In General; Necessity of Pleading Defense

§ 150. Whether raised by plaintiff or defendant

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  4 to 6, 11, 34, 51, 107, 110

Forms

[Am. Jur. Pleading and Practice Forms, Estoppel and Waiver § 18](#) (Estoppel against defendant—General form)

[Am. Jur. Pleading and Practice Forms, Estoppel and Waiver § 19](#) (Defendant estopped to rely on statute of limitations)

The rule requiring estoppel to be pleaded¹ applies not only when the estoppel is set up as a defense by the defendant² but also when the plaintiff asserts estoppel as part of his or her cause of action³ or to preclude a defense.⁴

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Footnotes

¹ § 149.

² [Clevenger v. Clevenger](#), 189 Cal. App. 2d 658, 11 Cal. Rptr. 707, 90 A.L.R.2d 569 (1st Dist. 1961); [Star Leasing Corp. v. Elliott](#), 194 Kan. 206, 398 P.2d 566 (1965); [Montagne v. Monk](#), 44 S.W.2d 451 (Tex. Civ. App. Beaumont 1931).

- 3 County of Santa Clara v. Vargas, 71 Cal. App. 3d 510, 139 Cal. Rptr. 537 (1st Dist. 1977); McAdow v. Kansas City Western Ry. Co., 100 Kan. 309, 164 P. 177 (1917); Halsell v. First Nat. Bank, 1915 OK 541, 48 Okla. 535, 150 P. 489 (1915).
- 4 County of Santa Clara v. Vargas, 71 Cal. App. 3d 510, 139 Cal. Rptr. 537 (1st Dist. 1977); Bloom v. Nathan Vehon Co., 341 Ill. 200, 173 N.E. 270, 72 A.L.R. 232 (1930).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 151

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure

B. Pleading

1. In General; Necessity of Pleading Defense

§ 151. Effect of failure to plead

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  107, 110

Treatises and Practice Aids

Wright and Miller's [Federal Practice and Procedure](#), Civil § 1278

Estoppel generally is unavailable to a party who fails to plead it¹ and as a rule may not be asserted first on an appeal.²

Observation:

An estoppel not pleaded in a prior action cannot be set up in a later action to defeat the estoppel of the judgment rendered in that prior action.³

CUMULATIVE SUPPLEMENT

Cases:

An affirmative defense, once forfeited, is excluded from the case, and, as a rule, cannot be asserted on appeal. [Wood v. Milyard](#), 132 S. Ct. 1826 (2012).

Majority owner of oil and gas leases forfeited right to raise argument on appeal of whether substantial breach, as opposed to material breach, would discharge his duty of performance under operating agreement under New Mexico law to pay costs for drilling well under foreclosure claim of operator of oil and gas leases, where owner did not demonstrate that he gave district court opportunity to determine that issue. [Elm Ridge Exploration Co., LLC v. Engle](#), 721 F.3d 1199 (10th Cir. 2013).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Department of Revenue v. Hobbs](#), 368 So. 2d 367 (Fla. Dist. Ct. App. 1st Dist. 1979); [Maness v. Santa Fe Park Enterprises, Inc.](#), 298 Ill. App. 3d 1014, 233 Ill. Dec. 93, 700 N.E.2d 194 (1st Dist. 1998); [Weil v. Rigali](#), 980 S.W.2d 89 (Mo. Ct. App. E.D. 1998).
- 2 [My Pie Intern., Inc. v. Debould, Inc.](#), 687 F.2d 919 (7th Cir. 1982); [Maness v. Santa Fe Park Enterprises, Inc.](#), 298 Ill. App. 3d 1014, 233 Ill. Dec. 93, 700 N.E.2d 194 (1st Dist. 1998).
- 3 [Brown v. Tillman](#), 121 Ala. 626, 25 So. 836 (1899).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 152

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure

B. Pleading

2. Necessity of Pleading Specially or with Particularity

§ 152. Generally; special or particular pleading

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  4 to 6, 11, 34, 51, 111, 112

Trial Strategy

[Tactics and Strategy of Pleading](#), 3 Am. Jur. Trials 681

As a general rule, a party must specially plead an equitable estoppel,¹ or plead the estoppel with particularity,² even in a notice pleading jurisdiction.³ However, special pleading is not required in every jurisdiction.⁴

Observation:

The rule requiring special pleading or pleading with particularity is intended to prevent the parties from raising surprise claims and defenses at trial.⁵

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Footnotes

- 1 [Williams v. Galloway](#), 211 Cal. App. 2d 302, 27 Cal. Rptr. 438 (5th Dist. 1962); [Dicks v. Colonial Finance Corp.](#), 85 So. 2d 874 (Fla. 1956); [Scott v. Nunn Elec. Supply Corp.](#), 386 S.W.2d 891 (Tex. Civ. App. Amarillo 1965).
- 2 [Orr v. Westminster Village North, Inc.](#), 689 N.E.2d 712 (Ind. 1997); [Continental Potash, Inc. v. Freeport-McMoran, Inc.](#), 115 N.M. 690, 858 P.2d 66 (1993).
- 3 [Johnson Intern., Inc. v. City of Phoenix](#), 192 Ariz. 466, 967 P.2d 607 (Ct. App. Div. 1 1998) (although Arizona is a notice-pleading state, claims of promises for purposes of promissory estoppel must be specifically pleaded).
As to notice as distinguished from fact pleading, see [Am. Jur. 2d, Pleading § 5](#).
As to exceptions to this general rule, see §§ [153](#), [154](#).
As to the sufficiency of a pleading of estoppel, see [§ 157](#).
- 4 [Gelinis v. Town of West Hartford](#), 225 Conn. 575, 626 A.2d 259 (1993).
- 5 [Tormaschy v. Tormaschy](#), 1997 ND 2, 559 N.W.2d 813 (N.D. 1997).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 153

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure

B. Pleading

2. Necessity of Pleading Specially or with Particularity

§ 153. Exceptions to general rule; under common-law rule

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  4 to 6, 11, 34, 51, 111, 112

Under the common-law rule—which still applies in some jurisdictions—in cases arising at law, an estoppel in pais may be available under a general plea and need not be specially pleaded¹ although it nevertheless may be.² Similarly, there is some authority that estoppel in pais need not be specially pleaded in equity.³

Practice Tip:

Even in common-law rule jurisdictions, special pleading may be required when an estoppel in pais is relied upon to avoid a defense setup in a special plea.⁴

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Footnotes

- 1 [Reardon v. Mutual Life Ins. Co. of N. Y.](#), 138 Conn. 510, 86 A.2d 570, 30 A.L.R.2d 828 (1952).
- 2 [Dickson v. New York Biscuit Co.](#), 211 Ill. 468, 71 N.E. 1058 (1904); [Feinberg v. Allen](#), 143 A.D. 866, 128 N.Y.S. 906 (3d Dep't 1911), [aff'd](#), 208 N.Y. 215, 101 N.E. 893 (1913).
- 3 [Colby v. Preferred Acc. Ins. Co. of New York](#), 134 Me. 18, 181 A. 13 (1935) (decided before the procedural merger of law and equity).
A court of equity is bound to consider the conduct of the parties seeking equitable relief even though estoppel in pais is not specially pleaded. [Morehead v. Morehead](#), 222 Miss. 161, 75 So. 2d 453 (1954).
- 4 [Furst v. Carrico](#), 167 Md. 465, 175 A. 442, 96 A.L.R. 375 (1934).
As to special pleas, see [Am. Jur. 2d, Pleading § 260](#).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 154

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure

B. Pleading

2. Necessity of Pleading Specially or with Particularity

§ 154. Exceptions to general rule; under common-law rule—Other exceptions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  4 to 6, 11, 34, 51, 111, 112

In addition to the common-law rule exception,¹ the general rule requiring the pleading of estoppel may not apply when a party has had no opportunity to plead the defense,² as when a party pleads one kind of estoppel and wants to prove another, which he or she had no opportunity to plead;³ when formal pleadings are not contemplated, such as in city council proceedings;⁴ or when statutory provisions provide an exception to the general rule.⁵

An exception also may be found when—

- the estoppel appears in the pleadings of the adverse party.⁶
- the facts constituting the estoppel are found in the combined pleadings of the parties⁷ or an agreed statement of facts upon which the case is tried.⁸
- the matter is admissible in evidence to rebut an affirmative allegation of the complaint.⁹
- the pleading is waived.¹⁰
- the estoppel is raised to counter a defendant's plea of the statute of limitations.¹¹

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Footnotes

- 1 § 153.
- 2 Devine v. Cordovado, 15 Alaska 232, 1954 WL 1354 (Terr. Alaska 1954); South Second Livestock Auction, Inc. v. Roberts, 69 N.M. 155, 364 P.2d 859 (1961).
- 3 In re Anderson's Estate, 121 Mont. 515, 194 P.2d 621 (1948).
- 4 Gilcrest & Co. v. City of Des Moines, 157 Iowa 525, 137 N.W. 1072 (1912).
- 5 Fleeson v. Whitcomb, 132 Kan. 213, 294 P. 877, 75 A.L.R. 1368 (1931).
- 6 Phoenix Mut. Life Ins. Co. v. Birkelund, 29 Cal. 2d 352, 175 P.2d 5 (1946); Time Finance Co. v. Nelson, 312 Ky. 255, 227 S.W.2d 189, 17 A.L.R.2d 1204 (1950); Arlt v. American Family Mut. Ins. Co., 191 Wis. 2d 599, 530 N.W.2d 21 (Ct. App. 1995).
- 7 Gillett v. Moore, 74 Colo. 484, 223 P. 21 (1924); Ross v. First Am. Ins. Co., 125 Neb. 329, 250 N.W. 75 (1933).
- 8 Smith v. Anglo-California Trust Co., 205 Cal. 496, 271 P. 898 (1928).
- 9 Steffen v. Snohomish County, 186 Wash. 235, 57 P.2d 1035 (1936).
- 10 Kelly v. Gram, 73 S.D. 11, 38 N.W.2d 460 (1949).
- 11 County of Santa Clara v. Vargas, 71 Cal. App. 3d 510, 139 Cal. Rptr. 537 (1st Dist. 1977).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 155

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure


B. Pleading

3. Manner or Time of Pleading

§ 155. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  107, 109.1, 113

Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 62:87 to 62:91](#)

Trial Strategy

[Tactics and Strategy of Pleading, 3 Am. Jur. Trials 681](#)

When pleaded as a defense, estoppel properly may be set up in the answer.¹ When it is a part of the cause of action, generally, estoppel should be set forth in the complaint or petition or reply.²

When the matter appears in an adverse party's pleadings,³ estoppel also may properly be raised by a demurrer,⁴ either general⁵ or specific,⁶ or by a motion,⁷ such as a motion to dismiss.⁸

Observation:

There is some authority that estoppel may be asserted for the first time in response to a motion for summary judgment, at least when there is no prejudice or surprise to the nonmoving party and when the movant subsequently amends his or her answer specifically to assert the defense.⁹

Demurrer also may be proper when pleading estoppel by deed.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Under Iowa law as predicted by bankruptcy court, superpriority lien which agricultural supply dealer acquired by filing a financing statement on 31st day after debtor-farmers purchased feed from dealer for their livestock, just within 31-day "lookback" period specified in Iowa's agricultural supply lien statute, was only for value of feed supplied from initial date of purchase to the filing of financing statement; to obtain superpriority lien for any feed that it thereafter supplied, dealer had to file a new financing statement within 31-day period specified in statute. I.C.A. § 570A.4. [In re Shulista](#), 451 B.R. 867, 74 U.C.C. Rep. Serv. 2d 370 (Bankr. N.D. Iowa 2011).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Herington v. Herrera](#), 44 N.M. 374, 102 P.2d 896 (1940); [Arlt v. American Family Mut. Ins. Co.](#), 191 Wis. 2d 599, 530 N.W.2d 21 (Ct. App. 1995).
As to items to be raised when pleading equitable estoppel, see § 161.
As to the necessity of pleading equitable estoppel specially, see § 152.
- 2 [First Nat. Bank of Oregon City v. Allen](#), 106 Or. 190, 211 P. 913 (1923).
Under some circumstances, estoppel also may be set up in a reply or replication. [Metropolitan Life Ins. Co. v. Hale](#), 47 Ga. App. 674, 171 S.E. 306 (1933).
- 3 § 154.
- 4 [Time Finance Co. v. Nelson](#), 312 Ky. 255, 227 S.W.2d 189, 17 A.L.R.2d 1204 (1950); [Harrell v. Powell](#), 251 N.C. 636, 112 S.E.2d 81 (1960); [Schneck v. Mutual Service Cas. Ins. Co.](#), 18 Wis. 2d 566, 119 N.W.2d 342 (1963).
As to demurrers, generally, see *Am. Jur. 2d, Pleading* § 607.
- 5 [National Life & Acc. Ins. Co. v. Leo](#), 50 Ga. App. 473, 178 S.E. 322 (1934).
- 6 [Harrell v. Powell](#), 251 N.C. 636, 112 S.E.2d 81 (1960) (the demurrer must point out specifically the matter of the estoppel).
- 7 [Underwood v. Greenlees](#), 131 Kan. 308, 291 P. 777 (1930).

- 8 [Western Cas. & Sur. Co. v. Beverforden](#), 93 F.2d 166 (C.C.A. 8th Cir. 1937).
- 9 [Cooperative Finance Ass'n, Inc. v. Garst](#), 917 F. Supp. 1356 (N.D. Iowa 1996).
- As to pleading by amendment, see § 156.
- 10 [Hanson v. Buckner's Ex'r](#), 34 Ky. 251, 4 Dana 251, 1836 WL 2054 (1836).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 156

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure


B. Pleading

3. Manner or Time of Pleading

§ 156. By amendment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#) , [107](#), [109.1](#), [113](#)

Treatises and Practice Aids

[Federal Procedure, L. Ed. § 62:296](#)

Under some circumstances, estoppel may be pleaded by an amendment¹ as when the amendment will not prejudice the other party,² change the issues or the cause of action,³ or change the position of the party desiring the amendment.⁴

A court may sua sponte amend the pleadings to reflect the inclusion of the affirmative defense of estoppel when all the facts necessary to such a defense are alleged, and the matter expressly is litigated at the trial by both parties.⁵

Practice Tip:

The granting of leave to amend pleadings or to file additional pleadings after the issues are closed and on trial is within the court's sound legal discretion. Accordingly, a court does not err in refusing to permit a party to set up an estoppel by amendment unless an abuse of discretion to the prejudice of the objecting party can be shown.⁶

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Footnotes

- 1 [Feick v. Stephens, 250 F. 185 \(C.C.A. 6th Cir. 1918\)](#) (an amendment to the pleadings to include an estoppel will be allowed if requested); [Gilbert v. Sexton, 401 P.2d 300 \(Alaska 1965\)](#) (a pleading can be amended at any time to conform to the proof); [Santifer v. Arkansas Pulpwood Co., Inc., 66 Ark. App. 145, 991 S.W.2d 130 \(1999\)](#) (may be raised by amendment); [Hempy v. Brooke, 115 Ohio App. 246, 20 Ohio Op. 2d 321, 184 N.E.2d 686 \(10th Dist. Franklin County 1961\)](#) (a pleading can be amended to allege estoppel proved by the opponent's testimony).
- 2 [Parrott v. Dyer, 105 Ga. 93, 31 S.E. 417 \(1898\)](#); [Neville v. D'Oench, 327 Mo. 34, 34 S.W.2d 491 \(1930\)](#); [Hahn v. Sleepy Eye Milling Co., 21 S.D. 324, 112 N.W. 843 \(1907\)](#).
- 3 [Southern Exch. Bank v. Pope, 152 Ga. 162, 108 S.E. 551 \(1921\)](#); [First Nat. Bank of Bangor v. American Bangor Slate Co., 229 Pa. 27, 77 A. 1100 \(1910\)](#); [Hahn v. Sleepy Eye Milling Co., 21 S.D. 324, 112 N.W. 843 \(1907\)](#).
- 4 [Beard v. Royal Neighbors of America, 60 Or. 41, 118 P. 171 \(1911\)](#).
- 5 [State ex rel. Celebrezze v. Tele-Communications, Inc., 62 Ohio Misc. 2d 405, 601 N.E.2d 234 \(Ct. Cl. 1990\)](#).
- 6 [Frankfort Marine, Acc. & Plate Glass Ins. Co. v. Lafayette Telephone Co., 79 Ind. App. 663, 129 N.E. 329 \(1920\)](#); [State v. Bozeman, 156 La. 635, 101 So. 4 \(1924\)](#).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 157

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure

B. Pleading

4. Sufficiency of Pleading

§ 157. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  112

Treatises and Practice Aids

[Federal Procedure, L. Ed. § 62:94](#)

Forms

[Am. Jur. Pleading and Practice Forms, Estoppel and Waiver § 6](#) (Checklist—Drafting an answer raising the defense of equitable estoppel)

[Am. Jur. Pleading and Practice Forms, Estoppel and Waiver §§ 7 to 17, 31, 32, 34 to 37](#) (Asserting estoppel—General forms)

[Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure § 91](#) (Answer—Affirmative Defense—Estoppel)

[West's Federal Forms §§ 2067, 2068](#) (5th ed.) (Defenses—Estoppel)

A party seeking to invoke the doctrine of equitable estoppel must plead facts sufficient to raise an issue as to its application.¹ All the elements and facts necessary to constitute estoppel generally must be set out in the pleading² with precision, certainty, accuracy, and particularity³ although proof of the specific details of the alleged elements of estoppel is not required in the pleadings.⁴ The rule is that every plea in estoppel must be certain in every particular and must allege the facts upon which the plea is predicated and must allege every material fact that the pleader expects to prove in support of the plea.⁵

The plea must allege every material fact that the pleader expects to prove or upon which the estoppel is predicated,⁶ anticipate and meet every possible answer of the other party,⁷ and leave nothing to intendment or inference.⁸

Observation:

Conclusory pleadings not supported by a statement of facts generally are deemed insufficient.⁹

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Footnotes

- 1 O'Rourke v. Access Health, Inc., 282 Ill. App. 3d 394, 218 Ill. Dec. 51, 668 N.E.2d 214 (1st Dist. 1996); Mark Twain Kansas City Bank v. Jackson, Brouillette, Pohl & Kirley, P.C., 912 S.W.2d 536 (Mo. Ct. App. W.D. 1995); Friedland v. Gales, 131 N.C. App. 802, 509 S.E.2d 793 (1998).
- 2 Herington v. Herrera, 44 N.M. 374, 102 P.2d 896 (1940); Dunn v. Dunn, 242 N.C. 234, 87 S.E.2d 308 (1955); McCarthy v. Union Pac. Ry. Co., 58 Wyo. 308, 131 P.2d 326 (1942).
- 3 Concord Oil Co. v. Alco Oil & Gas Corp., 387 S.W.2d 635 (Tex. 1965).
As to the necessity of pleading estoppel specially or with particularity, see §§ 152 to 154.
- 4 Rogers v. Town of Islip, 230 A.D.2d 727, 646 N.Y.S.2d 158 (2d Dep't 1996).
- 5 RLI Ins. Co. v. MLK Ave. Redevelopment Corp., 925 So. 2d 914 (Ala. 2005).
- 6 Quirk v. Bedal, 42 Idaho 567, 248 P. 447 (1926).
- 7 Colvocoresses v. W. S. Wasserman Co., 38 Del. 253, 190 A. 607 (Super. Ct. 1937).
- 8 Quirk v. Bedal, 42 Idaho 567, 248 P. 447 (1926).
Any intendment or inference is strongly against the party who pleads estoppel. Concord Oil Co. v. Alco Oil & Gas Corp., 387 S.W.2d 635 (Tex. 1965).
- 9 RLI Ins. Co. v. MLK Ave. Redevelopment Corp., 925 So. 2d 914 (Ala. 2005); Benson v. Andrews, 166 Cal. App. 2d 44, 332 P.2d 698 (2d Dist. 1958); Dunn v. Dunn, 242 N.C. 234, 87 S.E.2d 308 (1955).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 158

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure


B. Pleading

4. Sufficiency of Pleading

§ 158. Formalities and technicalities of pleading

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  111, 112

Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 62:87 to 62:91](#)

As a general rule, estoppel need not be designated or pleaded formally as such, and it is sufficient if the estoppel appears by the facts stated in the pleading.¹

Practice Tip:

A complaint sufficiently pleads an estoppel when it informs the defendant of the facts on which the plaintiff intends to rely and includes the essential elements of the defense.²

Technical deficiencies in the pleading will not be fatal if all the facts necessary to constitute an estoppel are pleaded and no objection is made to the form of the pleading.³

Observation:

It has been held that the designation of a pleading as one setting forth an estoppel is a mere legal conclusion that it is both unnecessary and improper to plead.⁴ However, such a designation also has been considered better pleading in another jurisdiction and has been recommended to express the purpose for which the facts are pleaded.⁵

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Footnotes

- 1 [Special Event Entertainment v. Rockefeller Center, Inc.](#), 458 F. Supp. 72 (S.D. N.Y. 1978) (applying New York law); [Munger v. Boardman](#), 53 Ariz. 271, 88 P.2d 536 (1939); [Rieves v. Smith](#), 184 Ga. 657, 192 S.E. 372, 112 A.L.R. 368 (1937); [McCleary v. Brown](#), 1941 OK 398, 190 Okla. 19, 119 P.2d 830, 137 A.L.R. 1018 (1941).
- 2 [Bruce v. Jefferson Union High School Dist. of San Mateo County](#), 210 Cal. App. 2d 632, 26 Cal. Rptr. 762 (1st Dist. 1962).
- 3 [State Bank of Cooperstown v. Newell](#), 55 N.D. 184, 212 N.W. 848 (1927); [City of Portland v. Inman-Poulsen Lumber Co.](#), 66 Or. 86, 133 P. 829 (1913); [Humes Const. Co. v. Philadelphia Cas. Co.](#), 32 R.I. 246, 79 A. 1 (1911).
- 4 [Bibler v. Bibler](#), 205 Iowa 639, 216 N.W. 99 (1927).
- 5 [Yellow Jacket Irr. Dist. v. Pleasant Val. Ranch Co.](#), 78 Colo. 543, 243 P. 635 (1926).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 159

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure

B. Pleading

4. Sufficiency of Pleading

§ 159. Necessity of specific averments; conduct to be estopped

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  112

To be sufficient, a plea of estoppel generally must allege some conduct of the party to be estopped such as—

— untrue or misleading representations.¹

— misleading acts.²

— a concealment of material facts.³

— silence and acquiescence.⁴

CUMULATIVE SUPPLEMENT

Cases:

In order for promissory estoppel claim under New Hampshire law to survive a motion to dismiss for failure to state a claim, a plaintiff must plead facts that could plausibly support a finding that she reasonably relied on a promise of the defendant to her detriment. [Fed.Rules Civ.Proc.Rule 12\(b\)\(6\)](#), 28 U.S.C.A. [Ruivo v. Wells Fargo Bank, N.A.](#), 766 F.3d 87 (1st Cir. 2014).

Striking equitable estoppel defense of professional cycling team's former lead rider was warranted in former team member's qui tam action under False Claims Act (FCA), seeking to recover damages and penalties based on alleged fraudulent claims and

statements made in connection with two sponsorship agreements with United States Postal Service (USPS), where lead rider merely described continuing course of action that he and other defendants had embarked on earlier, without alleging any facts that could establish reasonable reliance on government that changed their position. [31 U.S.C.A. § 3729 et seq.](#); [Fed. R. Civ. P. 12\(f\)](#). [United States ex rel. Landis v. Tailwind Sports Corp.](#), 308 F.R.D. 1 (D.D.C. 2015).

Plaintiff's petition for relief against individual home builder, which alleged that plaintiff was suing for all causes of action under which it was entitled to recover "including but not limited to breach of contract, negligent representation, fraud, fraudulent conveyance, fraud in the inducement, and constructive fraud," did not provide fair notice to builder that plaintiff intended to pursue a cause of action for promissory estoppel, and thus, did not encompass promissory estoppel claim; petition alleged some, but not all, of the elements of promissory estoppel, petition alleged that builder held himself out as corporate entity and promised to pay corporate debts owed to plaintiff, which supported fraud claims rather than separate cause of action for promissory estoppel, and inclusion of catch-all phrase "including but not limited to" was not sufficient to provide notice of insufficiently pled promissory estoppel claim. [Lone Star Air Systems, Ltd. v. Powers](#), 401 S.W.3d 855 (Tex. App. Houston 14th Dist. 2013).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Menzenberger v. American State Bank](#), 101 Ind. App. 600, 198 N.E. 819 (1935); [Meyersohn v. Bloom](#), 259 A.D.2d 432, 687 N.Y.S.2d 341 (1st Dep't 1999); [Dye v. Gainey](#), 320 S.C. 65, 463 S.E.2d 97 (Ct. App. 1995).
- 2 [Federal Sur. Co. v. Guerrant](#), 238 Ky. 562, 38 S.W.2d 425 (1931); [V. Ponte and Sons, Inc. v. American Fibers Intern.](#), 222 A.D.2d 271, 635 N.Y.S.2d 193 (1st Dep't 1995); [Dye v. Gainey](#), 320 S.C. 65, 463 S.E.2d 97 (Ct. App. 1995).
- 3 [Seymour Imp. Co. v. Viking Sprinkler Co.](#), 87 Ind. App. 179, 161 N.E. 389 (1928); [Peck v. Imedia, Inc.](#), 293 N.J. Super. 151, 679 A.2d 745 (App. Div. 1996).
- 4 [Federal Sur. Co. v. Guerrant](#), 238 Ky. 562, 38 S.W.2d 425 (1931); [Shinew v. First Nat. Bank](#), 84 Ohio St. 297, 95 N.E. 881 (1911); [Ashley v. Pick](#), 53 Or. 410, 100 P. 1103 (1909).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 160

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure

B. Pleading

4. Sufficiency of Pleading

§ 160. Necessity of specific averments; conduct to be estopped—Parties' state of mind and knowledge of facts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  112

Forms

[Am. Jur. Pleading and Practice Forms, Estoppel and Waiver § 25](#) (Inducement to act based on representations as a requisite of estoppel)

[Am. Jur. Pleading and Practice Forms, Estoppel and Waiver § 26](#) (Fraudulent purpose or fraudulent result as a requisite of estoppel)

[Am. Jur. Pleading and Practice Forms, Estoppel and Waiver § 27](#) (Estoppel based on constructive fraud)

[Federal Procedural Forms § 1:167](#) (Affirmative defense—Estoppel—Action for rescission of contract for sale of real property [Fed. R. Civ. P. 8(c)])

Although as a general rule a plea of estoppel in pais must allege that the adverse party's conduct was intended to deceive the other party or that the act was committed with culpable neglect,¹ in some instances, it may only be necessary to show that the adverse party had full knowledge of the true facts.²

Observation:

The party invoking estoppel generally must allege that he or she was deceived or misled by the adverse party's conduct.³

To be considered sufficient, the pleading also may be required to allege that the adverse party was aware of and had knowledge of the truth of the matters at issue⁴ unless the representations were made under such circumstances that such knowledge may be imputed.⁵ The party seeking to invoke estoppel generally must allege that he or she was ignorant of the truth of the matter or could not conveniently have ascertained the truth.⁶

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Footnotes

- 1 [Schoonover v. Osborne](#), 193 Iowa 474, 187 N.W. 20, 27 A.L.R. 465 (1922).
- 2 [Bloch v. Sammons](#), 37 Or. 600, 55 P. 438 (1898).
- 3 [Federal Land Bank of Omaha, Neb., v. Sherburne](#), 213 Iowa 612, 239 N.W. 778 (1931); [Federal Sur. Co. v. Guerrant](#), 238 Ky. 562, 38 S.W.2d 425 (1931); [Knox v. Damascus Corp.](#), 200 S.W.2d 656 (Tex. Civ. App. Galveston 1947).
- 4 [Commercial Inv. Co. v. Newhagen](#), 83 Colo. 533, 266 P. 713 (1928); [Hartlep v. Murphy](#), 197 Ind. 222, 150 N.E. 312 (1926); [Lubric Oil Co. v. Drawe](#), 26 Ohio App. 478, 6 Ohio L. Abs. 404, 160 N.E. 93 (8th Dist. Cuyahoga County 1927).
- 5 [Hufford v. Lewis](#), 29 Ind. App. 202, 64 N.E. 99 (1902).
- 6 [Fleishbein v. Western Auto Supply Agency](#), 19 Cal. App. 2d 424, 65 P.2d 928 (2d Dist. 1937); [Lubric Oil Co. v. Drawe](#), 26 Ohio App. 478, 6 Ohio L. Abs. 404, 160 N.E. 93 (8th Dist. Cuyahoga County 1927); [Barber v. Anderson](#), 73 Utah 357, 274 P. 136 (1929).

End of Document

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28 Am. Jur. 2d Estoppel and Waiver § 161

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver

Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

V. Practice and Procedure

B. Pleading

4. Sufficiency of Pleading

§ 161. Necessity of specific averments; conduct to be estopped—Reliance on adverse party's conduct

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  112

A party seeking to invoke estoppel generally must allege that he or she acted in good faith and in reliance on the false representations or conduct of the party against whom the estoppel is claimed,¹ that is, that the person changed his or her position in regard to the matter in some way or suffered some detriment or lost some gain.²

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¹ [Christian Methodist Episcopal Church v. S & S Const. Co., Inc.](#), 615 So. 2d 568, 81 Ed. Law Rep. 1192 (Miss. 1993); [Peck v. Imedia, Inc.](#), 293 N.J. Super. 151, 679 A.2d 745 (App. Div. 1996); [Meyersohn v. Bloom](#), 259 A.D.2d 432, 687 N.Y.S.2d 341 (1st Dep't 1999).

² [Schell v. NK Enterprises, Inc.](#), 688 So. 2d 68 (La. Ct. App. 5th Cir. 1997); [Peck v. Imedia, Inc.](#), 293 N.J. Super. 151, 679 A.2d 745 (App. Div. 1996); [Knox v. Damascus Corp.](#), 200 S.W.2d 656 (Tex. Civ. App. Galveston 1947).

The investors' allegations that the president of a real-estate investment firm had undertaken to personally repay amounts owed to them by the firm, and that they had relied on his promise by foregoing more advantageous terms of their agreements with the firm, were sufficient to support a claim against the president under the theory of promissory estoppel. [Meyersohn v. Bloom](#), 259 A.D.2d 432, 687 N.Y.S.2d 341 (1st Dep't 1999).

End of Document

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